

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

NOTORIOUS CASE, NOVEMBER 1917

No. 124

PEOPLE'S TOBACCO COMPANY, LIMITED, PLAINTIFF IN
ERROR,

vs.

AMERICAN TOBACCO COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA.

FILED MARCH 15, 1918

(25,180)

(25,180)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 897.

PEOPLE'S TOBACCO COMPANY, LIMITED, PLAINTIFF IN
ERROR,

vs.

AMERICAN TOBACCO COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 14369.

PEOPLES TOBACCO COMPANY, LIMITED, Plaintiff in Error,
vs.
THE AMERICAN TOBACCO COMPANY, Defendant in Error.

Messrs. Merrick, Gensler & Schwarz, for the People's Tobacco Company, Limited, Plaintiff in Error.

Messrs. Junius Parker and Denegre, Leovy & Chaffe, for the American Tobacco Company, Defendant in Error.

Writ of Error to the United States District Court for the Eastern District of Louisiana, New Orleans Division, from the Supreme Court of the United States, returnable within thirty (30) days from January 17th, A. D. 1916, at the City of Washington, D. C.

Extension of thirty (30) days' time from the 16th day of February A. D., 1916, allowed by the Honorable Rufus E. Foster, United States District Judge, Eastern District of Louisiana.

TRANSCRIPT OF RECORD.

1 *Petition.*

Filed January 4th, 1912.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of the Peoples Tobacco Company, Limited, a corporation created and organized under the laws of Louisiana, domiciled and doing business at New Orleans, Louisiana, with respect, represents:

That petitioner was organized on the 28th day of June, 1899, in the City of New Orleans, and shortly thereafter began to do business; that the business of petitioner consisted and consists, in dealing in leaf tobacco and in manufacturing cigarettes, cigars, and smoking tobacco, and selling the same in Louisiana, and in other States of the United States, and in foreign countries;

That defendant, the American Tobacco Company, is a corporation organized and created under the laws of the State of New Jersey, and is a citizen of New Jersey, that said corporation is doing business and is authorized to do business in Louisiana, and in the City of New Orleans, Louisiana;

That when petitioner first started in business it succeeded and was doing a large and profitable business which was gradually increasing up to the year 1903; that in the year 1903, i. e., from July 1902 to June 1903, petitioner made the sum of \$40,282.43, which was a reasonable profit for its line of business.

Petitioner shows that from said year, with the exception of one year, to be hereinafter stated, its business began to decrease, despite all efforts of petitioner, despite a growth generally in petitioner's lines of business, and despite the fact that general conditions under which said business was being done remained substantially the same; that petitioner was unable to appreciate and know the reasons for the loss it was sustaining in the face of its increased efforts as aforesaid, and in the face of the expenditure of larger sums for manufacturing and advertising and that it was only in the year 1907 that petitioner learned the cause of its decreased and decreasing business, when in the suit of the United States v. American Tobacco Company, it was shown that the American Tobacco Company had restrained and monopolized, had conspired and attempted to restrain and monopolize, interstate commerce in the manufacture and sale of tobacco and its products, and that as a consequence and result of the restraint and monopoly, and attempted restraint and monopoly by the American Tobacco Company, which had been directed against your petitioner, petitioner had been injured, and was continuing to be injured, in its said business.

Petitioner further shows that at said time petitioner learned that the American Tobacco Company had combined and conspired with a company known as the "Craft Tobacco Company," which it had caused to be organized in the City of New Orleans, State of Louisiana, and with one Augustus Craft, for the purpose aforesaid, and for the purpose of more effectively injuring your petitioner, and driving him from the field of interstate business. Your petitioner shows that he filed a petition setting forth said facts, alleging violation of the Act of Congress known as the Sherman Anti-Trust Law, claiming damages for the injury sustained by petitioner up to the first day of June, 1907.

Now, your petitioner shows that the American Tobacco Company has since said date just aforesaid almost continually persisted in its violation of the law of the United States known as the Sherman Anti-Trust Law, has monopolized and restrained, and attempted and conspired to monopolize and restrain, interstate trade and commerce in tobacco and its products, has controlled the market of the raw material, has raised the price thereof, and has had in view and worked toward the end of injuring and harming your petitioner in order to drive him from the field of interstate business, and in carrying out its objects and purposes to that end has continued to injure your petitioner.

Your petitioner shows that the said American Tobacco Company by its restraint and monopoly, and attempt and conspiring to restrain and monopolize, as part of its general aim and purpose to that end, and by virtue of its persistence therein, in violation of law, from

and after the first day of June, 1907, has damaged your petitioner in the sum of One Hundred and Thirty Thousand Two Hundred and Ninety-nine & 77/100 Dollars.

Petitioner further alleges and avers as follows:

First. That the American Tobacco Company has been found guilty of violating the laws of the United States and particularly the law known as the Sherman Anti-Trust Act, in that it has formed and maintained conspiracies in unreasonable restraint of trade in tobacco and its products in violation of the first section of said act, and has monopolized and attempted to monopolize interstate and foreign trade therein in violation of the second section of said act; and the said illegal combinations, conspiracies and monopolies have been ordered, by the Supreme Court of the United States, discontinued, and by a decree of the said court, the defendant, the American Tobacco Company has been ordered dissolved in due course.

Second. Your petitioner shows "that the history of the American Tobacco Company is replete with the doing of acts prohibited
4 by law and showing a purpose to acquire dominion and control of the tobacco trade, not by the mere exertion of the ordinary right to contract and to trade, but by methods devised in order to monopolize the trade by driving competitors out of business:

"That the very first organization, or combination was impelled by a previously existing fierce trade war inspired by one or more of the minds which brought about and became parties to that combination;

"That immediately after that combination and the increase of capital which followed, the power of the combination was used as a vantage ground to further monopolize the trade in tobacco by means of trade conflicts designed to injure others, either by driving competitors out of the business, or compelling them to become parties to a combination as shown by the absorption of companies engaged in manufacturing plug, licorice, and snuff, as more specifically hereinafter detailed;"

"That the unlawful purpose was evidenced by the organization of a new company, or the control exerted by the taking of stock in one or another or in several so as to obscure the result actually attained, nevertheless, uniform in their manifestations of the purpose to restrain others and to monopolize and restrain power in the hands of the few who, from the beginning, contemplated the mastery of the trade."

"That there was a perpetual expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them but in order to close them up and render them useless for the purposes of trade."

"That there were constantly recurring stipulations by which numbers of persons, whether manufacturers, stockholders or employees, were required to bind themselves, generally for long
5 periods, not to compete in the future."

Third. That this plan, scheme, conspiracy, and attempt to restrain and monopolize the interstate business in tobacco and its products, came about substantially as follows, to-wit:

"Prior to the year 1890 tobacco was grown in many sections of the country having diversity of soil and climate, and, therefore, was subject to various vicissitudes resulting from the places of production, and consequently varied in quality. The great diversity of use to which tobacco was applied in manufacturing caused it to be that there was a demand for all the various qualities. The demand for all qualities was not local, but widespread, extending as well to domestic as to foreign trade, and, therefore, all the products were marketed under competitive conditions of a peculiarly advantageous nature. The manufacture of the product in this country in various forms was successfully carried on by many individuals or concerns scattered throughout the country, a large number, perhaps, being in the vicinage of production and others being advantageously situated in or near the principal markets of distribution."

In January, 1890, the leading and most important tobacco manufacturing in the United States, and the leading users of leaf tobacco in the United States, were Allen & Ginter, located at Richmond, Va.; W. Duke Sons & Co., a North Carolina corporation, located at Durham, N. C. and at the City of New York; Kinney Tobacco Company, a New York corporation located at the City of New York; W. S. Kimball, partnership, located at Rochester, N. Y.; and Goodwin & Company, located at Brooklyn, N. Y., all competing companies.

In said year these companies were merged into, or surrendered all assets to, a new company formed and known as the American Tobacco Company. The object of the formation of the said new company was to restrain and monopolize interstate trade in tobacco and its products.

Fourth. Thereafter, and for the purpose of further carrying out its desire to control and monopolize the industry, trade and commerce in tobacco and its manufacture, the said American Tobacco Company and its allied companies drove out of business, or acquired, numerous companies, all of said companies being engaged in interstate business in the purchase, manufacture or sale of tobacco and its products, and in each instance those selling, or forced to sell to the American Tobacco Company, agreed for a given period not to engage or become interested in the business of manufacturing, selling or distributing tobacco or its products throughout the United States; that among such companies were the following, and each and every one of the plants of said companies were closed and abandoned after being acquired by this defendant:

In April, 1891, the G. W. Gail & Ax, a partnership of Baltimore, Md. Cash \$77,582.66; Preferred Stock \$705,000.; Common Stock \$1,055,000.

In May, 1892, S. Hershheim Bros. & Co., New Orleans, Louisiana. Cash \$269,961.33; Preferred Stock, \$100,000; Common Stock \$150,000.

In February, 1895, The Consolidated Cigarette Company of New York. Cash \$288,485.34.

In April, 1895, the H. W. Meyer Tobacco Mfg. Co., of New York. Cash \$351,915.78.

In March, 1895, Thomas H. Hall of New York. Cash \$549,-165.48.

In October, 1895, the James G. Butler Tobacco Company of St. Louis, Mo. Cash \$2,919.11; preferred stock \$192,000; common stock \$273,000.

In May, 1896, A. H. Motley Company, Reidsville, N. C. Cash \$24,000.

In November, 1897, the American Eagle Tobacco Company of Detroit, Michigan. Cash \$60,000.

In July, 1898, the Herman Mandelbaum, New York City. Cash \$26,000.

In October, 1898, the Drummond Tobacco Company of St. Louis. Cash \$3,457,500.

Fifth. That the business of the said American Tobacco Company (then the old American Tobacco Company) had grown so large and complex as to make it necessary, in 1898, to form another company, to-wit, the Continental Tobacco Company, for the purpose of engaging in and controlling interstate and foreign business in the manufacture, sale, and distribution of plug tobacco and of taking over that branch of the business of the American Tobacco Company.

That prior to the period of the organization of the Continental Tobacco Company the following were the largest and most powerful companies in the United States engaged in the manufacture, sale and distribution of plug tobacco, and competing with the defendant, the American Tobacco Company, to-wit, the P. Lorillard Company, located at Middleton, O.; Liggett & Myers Tob. Co. at St. Louis, Mo.; John Finzer & Bros., at Louisville, Ky.; J. Wright Company and P. H. Mayo & Bros., both at Richmond, Va.; and Daniel Schotten & Company, of Detroit, Mich.

That the said Continental Tobacco Company, with a capital stock of \$100,000,000 took over, after its organization, from the American Tobacco Company, its plug business, and received a conveyance of all of the business, plants, assets, good will etc. of the foregoing various companies, competitors of the American Tobacco Company, in the manufacture, sale and distribution of plug tobacco, together with the covenant heretofore mentioned that the vendors were not to engage in the plug tobacco business in competition with the vendee.

In addition to the foregoing the following companies, or controlling interest therein, have been taken over by the defendant in furtherance of their general scheme and plan to control the plug tobacco trade, to-wit:

(February 1899) The Monopol Tobacco Works, New York, \$250,000;

(March, 1899) The Luhrman Tobacco Works, Cincinnati, 918,000;

(July, 1899) Rucabado y Portela, San Juan, P. R., 585,300;

(July, 1899) R. J. Reynolds Tob. Co. Winston-Salem, N. C. Pr'd Stock \$5,000,000; Common Stock \$7,525,000;

(March, 1899) Blakwell's Durham Tob. Co., Durham, N. C., 4,000,000;

(1902) Reynolds Tobacco Co., Bristol, Tenn.

(1903) F. R. Penn Tobacco Company, Reidsville, N. C.

(1903) Wells-Whitehead Tobacco Company, Wilson, N. C. and others.

The above representing a cash investment of about the sum of \$10,860,829.70, and a stock investment of \$15,000,000.

Sixth. That the said American Tobacco Company and the Continental Tobacco Company acquired further the following companies, the plants of which were permanently abandoned and closed after acquisition, to-wit:

In February, 1899, Wright Bros. Tob. Co. of St. Charles Mo. Cash \$132,001.10;

The Banner Tobacco Company, Detroit, Mich. in March 1899, for Cash \$50,000;

In March, 1899, The Bowers Snuff & Tobacco Company, Ltd. of Changewater, N. J. Preferred stock \$200,000; Common stock \$200,000;

In March, 1899, M. S. Paceholder, Baltimore, Md., cash \$108,950.64;

9 In July, 1899, The Union Tobacco Company, New York City, Common stock \$12,500,000;

In July, 1899, The Aug. Beck Co. of Chicago, Ill. Cash \$322,296.34;

In September, 1899, Buchanan & Lyall, Brooklyn, N. Y. Cash \$2,400,000;

In September, 1900, Rice & Vaughan, Louisville. Cash, \$80,285.46;

In April, 1900, T. L. Vaughan & Co., Winston, N. C. Cash \$90,506;

In December, 1900, Brown Bros. Co., Winston, N. C. \$67,615.

In December, 1900, P. H. Hanes & Co. and B. F. Hanes & Company, Winston, N. C., \$671,950;

In January, 1901, Rosenblum & Lehmann, New York City. Cash \$32,596.52;

In February, 1901, Wellman, Dwire Tob. Co., St. Louis, Mo. Cash \$583,026.81;

In April, 1901, C. V. Winfree Tob. Co., Lynchburg, Va. Cash \$117,019.48;

In Oct. 1901, Addison Tinsley Tob. Co., Louisiana, Mo. \$110,466.51;

In June, 1901, the S. W. Venable Tob. Co., Petersburg, Pa. Cash \$117,019.48;

In November, 1901, the D. H. McAlpin & Co. of New York. \$1,442,309.08;

In December, 1901, H. C. Wetmore Tob. Co., St. Louis, Mo. \$378,430.07;

In December, 1901, Wilson & McCalley Tob. Co., Middletown, Ohio, \$361,900.00;

10 In May, 1903, R. F. Morris & Son Mfg. Co., Durham, N. C., \$35,000;

In May, 1903, T. C. Williams Co. Richmond, Va., \$375,000;

In September, 1903, Butler & Boshier Co., Richmond, Va., \$208,-055.13;

October, 1903, Harry Weissinger Tob. Co. of Louisville, Ky., \$1,179,150.00;

In November, 1903, Manufacturers Tobacco Co. of Louisville, Ky. \$69,843.09;

January, 1904, Merriwether Snuff & Tob. Co. Clarksville, Tenn. \$5,063.13;

In October, 1904, Bland Tob. Co. Petersburg, Va., \$86,425.00.

In January, 1905, B. Leidersdrof & Co. Milwaukee, Wis., \$600,-000.00;

June, 1905, Wegman & Bro. Chicago, Ill. \$425,500.00;

In December, 1905, Rucker & Witten Tob. Co. Martinsville, Va., \$512,898.00;

In January, 1907, Leopold Miller & Son, New York City, \$249,-193.60;

In December, 1906, D. H. Spenser & Co., Martinsville, Va. \$314,-255.00;

Petitioner shows that the various companies bought out and closed up herein before mentioned—and there were others not mentioned—involved as outlay by the defendant and its allied companies, in cash and stock, of \$23,341,010.34, and petitioner further shows that the said allied acquired in addition to the foregoing, the following companies, the plants of which were not closed, but were operated, to-wit:

In March, 1899, Irby Cigar & Tobacco Co., Ltd. New Orleans, La. \$625,000.00;

11 In February, 1891, National Tobacco Works, Louisville, Ky., Cash \$600,000; Preferred stock \$400,000; Common stock \$800,000;

In March, 1891, Philip Whitlock, Richmond, Va. \$300,000;

In April, 1901, Marburg Bros. Baltimore, Md., Cash \$164,637.35; Pfd. Stock \$1,230,000.00; Common stock \$1,845,000.

March, 1895, Herman Ellis, Baltimore, Md., \$147,206.46.

That the outlay for these additional companies represented an investment in cash and stock of \$6,101,143.81.

That in addition to the foregoing and during February, 1900, the American Tobacco Co. and the said Continental Tobacco Company and others, all for the purpose of effecting the objects heretofore set out, organized the American Snuff Company under the Laws of New Jersey, with a capital stock of \$25,000,000.00, so as to effect the same result in the snuff business as previously effected in plug and other businesses.

The said American Snuff Company acquired the following Companies, all engaged in interstate business:

Mch. 1900, Geo. W. Helme, Helmetta, N. J.	1,000,000.00
Apr. 1900, Stewart-Ralph Snuff Co. Clarksville, Tenn.	101,012.00
Jan. 1901, De Voe Snugg Co. Spottswood, N. J. ...	
June 1901, Dalmer & Co. Pittsburg, Pa.	
Dec. 1901, D. H. McAlpin & Co., Brooklyn, N. Y.	
May 1902, McNamara-Laird Co. Birmingham, Ala.	13,488.68
Feb. 1902, Stewart Snuff Co. Clarksville, Tenn.	65,517.50
Sept. 1902, Independent Snuff Mills, Virginia	16,741.31
Sep. 1902, Dental Snuff Company, Virginia	
May, 1903, R. F. Morris & Sons Mfg. Co.	4,813.14
July 1903, Skinner & Co. New Jersey	23,268.84
Oct. 1903, W. L. Venable & Co. Petersburg, Va.	5,899.75
12 Jan. 1904, J. B. Holloway Co. of Kentucky,	\$24,214.94
Mar. 1904, H. Bolander, Chicago, Ill.	138,044.81
Jul. 1905, Weyman & Bro. Pittsburg, Pa.	1,577,177.26

Since:

Jan. 1906, J. H. Fry Co., Clarksburg, W. Va.	8,000.00
do. Sun Tobacco Company	2,609.85
do. R. Starr & Company	92,639.91
do. Arnd Bros. Baltimore, Md.	20,000.00
do. Standard Snuff Company, Nashville, Tenn.	

That the total outlay herein stated just above aggregated the sum of \$3,093,427.99

Seventh. That in furtherance of its said objects and purposes in order to control and monopolize the entire tobacco industry and market between the states and with foreign countries, the said defendants did the following:

In August 1899, they acquired control of the Louisville Spirit Cured Tobacco Company, a Kentucky corporation;

In September 1899 they acquired the Golden Belt Mfg. Co., a New Jersey Corporation;

In December, 1899, they acquired John Conley & Son of New York, with a capital stock of \$250,000.00 engaged in the manufacture and distribution of tin foil which said company thereafter acquired all the capital stock of its competitors in the tin foil business, the Johnson Tin Foil & Metal Company of St. Louis, Mo.;

In March, 1900, they acquired the business, etc., of one S. Anargyros, for the sum of \$680,000, which company had been engaged in the enterstate and foreign commerce in leaf tobacco and cigarettes in competition with defendants;

In June, 1900, the defendants acquired the John Bollman Company of California, a corporation, paying the sum of \$102,200.00 therefor;

In February, 1902, they acquired the F. F. Adams Tob. Company of Wisconsin, for \$2,205,090.00;

In February, 1906, they got control of Spaulding & Merrick, of Chicago, Ill., for \$1,362,900.00;

In August, 1903, defendant acquired, for the sum of \$51,505.00 control of the Pinkerton Tobacco Company, of Zanesville, Ohio, manufacturers of leaf tobacco;

In 1905 defendant acquired control of Nall & Williams Tob. Co. of Louisville, Ky., manufacturers of leaf and other tobaccos, for the sum of \$438,000.00;

In October, 1905, they acquired Carroll Bros. of Lynchburg, Va., engaged in the buying and shipping of leaf tobacco throughout the United States;

In 1902 licorice root, an imported article, used in the manufacture of tobacco, was principally imported, manufactured, sold and distributed throughout the United States by the following companies:

McAndrews & Forbes of Newark, N. J.;

Mellor & Rittenhouse Co. of Camden, N. J.;

J. S. Young Co. of Baltimore;

Stamford Mfg. Co. of Stamford, Conn.;

John D. Lewis, of Providence, R. I.

During May, 1902, all for the purposes aforesaid, the defendant, with others allied, secured control of McAndrews & Forbes, and thereafter, from time to time, acquired the various companies just above mentioned.

14 In October, 1902, the Defendant acquired control of the Brunswick Briar Pipe Company of New York, for \$468,534.00;

In August, 1903, the defendant acquired the business, etc. of Thomas Cusack, of Chicago, Ill., organizing a company with a capital stock of \$250,000.00, the said new company taking over the business of the said Thomas Cusack, which was sign painting and advertising, the same to be used for the purposes heretofore detailed.

That the foregoing constituted an outlay of \$5,558,229.00.

In November, 1901, the defendant acquired a controlling interest in the business of the United Cigar Stores Company, a New Jersey Corporation, which Company operates cigar stores in the States of New York, Pennsylvania, New Jersey, Ohio, Maryland, Connecticut, Washington, D. C., California, Washington, Delaware, Oregon, Rhode Island, Massachusetts, Indiana, Missouri, Wisconsin, Michigan, Texas, Kentucky, Illinois, and Minnesota, and control subsidiary companies whose cigar stores aggregate the sum of \$725,000.00;

In addition to the foregoing, the defendant, the American Tobacco Company—today being the present American Tobacco Company—holds and owns, through itself and allied companies, the following:

The American Machine & Fdy. Co. (Stock)	51,000.00
The National Cigar Mch. Co. "	\$3,366,700.00
The New Jersey Machine Company, "	51,000.00
The Cres-ent Cigar & Tobacco Co. "	20,000.00
The Garson Vending Mach. Co. "	25,000.00
The Standard Tobacco Stemmer Co. (Cash)	64,995.76

In 1901, the defendant, with others allied, having determined on the wholesale manufacture and distribution of cigars, cheroots and stogies, and all for the purposes herein above stated organized the American Cigar Company, with a capital stock of \$10,000,-
 15 000.00, since increased to \$20,000,000.00 under the laws of New Jersey.

That said company, since its organization, has required the following companies, or controlling interests therein:

Jan. 1901, Powell, Smith & Co.	\$2,130,664.00
Jan. 1901, S. Levy & Company, New York	11,789.00
Mar. 1901, Barlow, Rogers & Company, Binghamton, N. Y.	205,681.00
Mar. 1901, Hummel, Vogt Co., Kentucky	42,428.00
May 1901, Binghamton Cigar Co. Binghamton, N. Y.	1,000.00
May 1901, Harburger, Noman & Co. New York, ..	800,000.00
Oct. 1901, Brown Bros. Co. Detroit, Mich.	469,272.00
Apr. 1902, Ross, Bruner & Feist, Cincinnati, O. ..	225,471.00
May 1903, Philippi Cigar Mfg. Co. Philippi, W. Va.	4,203.00
Aug. 1903, United Cigar Stores (1 store in New York)	54,141.00
Mar. 1905, The American Cigar Machine Co.	
Mar. 1906, M. W. Mendel Bros. N. Y. City	642,482.00
June 1901, Havana-American Co., Binghamton, N. Y.	4,000,000.00
May 1902, Havana Tobacco Co. (Control) a Company with a capital stock of \$19,000,000.00; American Machine & Foundry Co. New Jersey; American Stogie Co. New Jersey; Amsterdam Supply Company; M. Blaskower, Nevada; R. D. Burnett Cigar Co. Birmingham, Ala.	(Stock)
Cliff Weil Cigar Co. Richmond, Va. x . . .	100,000.00
Corp. J. & B. Moos, N. J. (Chicago)	200,000.00
J. & B. Moos, Cincinnati, O.	51,000.00
Federal Cigar Company, Pennsylvania . . .	200,000.00
J. J. Goodrum Tob. Co. Atlanta, Ga. . . .	47,700.00
Federal Cigar Real Estate Co. Pa.	30,000.00
Louisiana Tobacco Co. New Orleans . . .	50,000.00
The Smokers' Paradise Co. Atlantic City, . .	59,000.00
Cuban Land & Leaf Co. New Jersey	100,000.00
International Cig. Mach. Co. N. J. Corporation	2,920,200.00
New Jersey Mach. Co. N. J. Corp.	49,000.00
Porto Rican-American Tob. Co. N. J. Corp.	659,600.00
Porto Rican Leaf Tobacco Co. Corp.	250,000.00
Jordan, Gibson & Baum, Memphis, Tenn.	42,500.00
Kentucky Tobacco Products Co.	35,500.00

That the above outlay aggregates \$16,960,362.76; that the total outlay heretofore set out in the way indicated aggregates \$72,023,540.84.

Eighth. In June, 1901, the said defendant, the American Tobacco Company, together with the Continental Tobacco Co. for the purpose of more effectively carrying out its schemes and designs, created and organized the Consolidated Tobacco Company under the laws of the State of New Jersey, with a capital stock of \$30,000,000.00, afterwards increased to \$40,000,000.00; the object of the said corporation being to more readily enable the financial operations of the two corporations heretofore organized, namely, the American Tobacco Company and the Continental Tobacco Company.

Your petitioner, therefore, shows that the old American Tobacco Company was organized in January, 1890, as hereinbefore set out; that the Continental Tobacco Company was organized in December, 1898, as hereinbefore set out; that the Consolidated Tobacco Company was organized in June, 1901, as hereinbefore set out; that your petitioner, the Peoples Tobacco Company, Limited, was organized in June, 1899, being organized, therefore, about six months prior to the formation of the Consolidated Tobacco Company.

That not being satisfied with this vast accumulation of wealth and power over tobacco and its products in the United States the said defendant company determined, as part of its general conspiracy, to restrain and monopolize interstate and foreign trade, and in order more effectively to carry out its purpose to restrain, and monopolize tobacco and its products, to cross the waters, and, accordingly, in September, 1901, said defendant purchased for \$5,347,000.00 a Liverpool corporation known as Ogdens, Limited, then engaged in manufacturing and distributing tobacco and its products. A trade with the English companies followed, resulting in large losses, but, nevertheless maintained until an agreement was concluded and entered into with the English companies, to-wit, the Imperial Tobacco Company of Great Britain and Ireland. It was then agreed between the said American Tobacco Company and the said English companies that the Imperial Tobacco Company should limit its trade to the United Kingdom, except the right to purchase leaf tobacco in the United States, and that the American Tobacco Company should limit its trade to the United States and dependencies and Cuba, and there was organized a new company, called the British American Company, with a capital stock of sixty million dollars (\$60,000,000.00) which company was to take over the export business in other countries of both the American Tobacco Company and the Imperial Tobacco Company. The American Tobacco Company held two-thirds of the capital stock of this British-American Company.

Ninth. Now your petitioner represents that the said three companies, namely, the American Tobacco Company, organized in January, 1890, and the Continental Tobacco Company, organized in 1891, and the Consolidated Tobacco Company, organized in 1901, owning and controlling vast interests hereinbe-

fore set out in detail, and others, did, in October, 1904, all for the purposes aforesaid, and with the object of restraining and monopolizing and conspiring to restrain and monopolize and destroy competition in the interstate trade and foreign trade in tobacco and its raw and finished products, and in the articles necessary in the use and manufacture, formed a merged company under the name of the American Tobacco Company under the laws of New Jersey, with total assets aggregating the approximate sum of \$293,620,115.20.

Now your petitioner further represents that since the organization of the new American Tobacco Company merger in 1904, the same methods used from the beginning have continued; your petitioner charges as a fact:

"First, that since the organization of the new American Tobacco Company that company has acquired four large tobacco concerns; that restrictive covenants against engaging in the tobacco business were taken from the sellers and that the plants were not continued in operation but were at once abandoned. Second, that the new company, has, besides, acquired control of eight additional concerns, the business of such concerns being now carried on by four separate corporations, all absolutely controlled by the American Tobacco Company *all through* the connection as to two of these companies with the corporation was long and persistently denied."

Tenth. Your petitioner further shows that throughout the United States the defendant company has agents situated in almost every state for the purpose of its purchase of leaf tobacco and the control of the market thereof, having such representatives, both for
19 the purchase of the raw material and for the sale of the manufactured article.

Your petitioner shows that from 1890 up to and including 1907, the American Tobacco Company, defendant herein, has manufactured over eighty per cent (80%) of the cigarettes produced in the United States; thus, for instance, in the year 1890, the total production of cigarettes in the United States was 2,505,106,610, while the American Tobacco Company and its allied companies produced of said number 2,453,458,000, and similar results can be shown for each succeeding year.

The total percentage of smoking tobacco produced in the United States by the American Tobacco Company and its allied companies, has constantly increased, until the year 1906 it amounted to seventy per cent (70%) of the entire smoking tobacco used throughout the United States, there having been produced in the said year 175,664,091 pounds, out of which 123,026,237 pounds were produced by the American Tobacco Company and its allied companies.

The same can be said of plug and twist tobacco; that, for instance, the American Tobacco Company and its allied companies produced during the year 1906 eighty-one per cent (81%) of the total amount of plug and twist tobacco in the United States. During 1906 the total amount produced in the United States — 176,749,800 pounds, of which 143,906,868 pounds were produced by the American Tobacco Company and its allied companies, and similar results were accomplished from 1890 to date.

That the same can be said of fine cut tobacco; for instance, the American Tobacco Company and its allied companies produced in 1906 more than eighty-one per cent (81%) of the total amount of fine cut tobacco made in the United States. Out of a total production of 12,742,345 pounds they manufactured 10,321,285, 20 and similar results can be shown from 1890 to date.

During the year 1907 there was a total of 1,069,215,111 little cigars produced in the United States and eighty-nine per cent (89%) of this amount, or 954,001,460 were produced by the American Tobacco Company and its allied companies.

Eleventh. That this vast organization of strength throughout the country and abroad, controlling numerous subsidiary companies, as detailed above, has been found and declared to be an unlawful conspiracy, combination and monopoly in unreasonable restraint of trade, and ordered dissolved:

That the combination has been found in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, to be in restraint of trade, and an attempt to monopolize and a monopolization within the first and — sections of the antitrust act."

Twelfth. Now your petitioner shows that the defendant the American Tobacco Company, and its allied companies, are continuing and are persistent in continuing, their restraint and monopoly and attempt and conspiracy to restrain and monopolize the trade in tobacco and its products and have continued to oppress and are now oppressing by unfair methods of competition, all for the purposes aforesaid, your petitioner, and have attempted, and are continuing to attempt, as part of their aforesaid purpose, to restrain trade and monopolize the interstate and foreign trade in tobacco and its products, and to drive your petitioner from the field of business and to destroy petitioner; petitioner alleges and shows that such acts on the part of the said defendants have been persisted in from and 21 since June 1908; that petitioner avers that among the things done by the said defendant are the following:

1st. Granting rebates to peddlers in the form of cash payments, or giving gratis tobacco;

2nd. Packing extra coupons in fighting brands of cigarettes;

3rd. Interfering with the sale of your petitioners goods and threatening the party selling them with the withdrawal of the brands of the American Tobacco Company;

4th. Selling articles below cost;

All as part of and with the purpose of extending and perfecting the monopoly and restraint and attempted monopoly and restraint hereinbefore detailed;

That among the brands of cigarettes manufactured and sold by the American Tobacco Company are the following:
"Picayune", "Home Run," "King Bee," and "Coupon."

Your petitioner represents that all of said cigarettes are made from a similar type of tobacco known as Burley tobacco, and are in form and contents similar, and of a similar cost of manufacture; that the first three named brands, to-wit: "Picayune," "Home Run,"

and "King Bee," have become established brands; that in order to fight your petitioner and injure *him* a new brand of cigarettes, of the same type and character and of the same cost of manufacture was put on the market, to-wit, "Coupon" cigarettes; that this cigarette was sold twenty (20) in a package for five cents (5¢) and contained, in addition two one-half coupons in each package; that this coupon cigarette was, and is, sold at a loss and was used for the purpose of and as part of the plan hereinbefore set out in detail, in trying to drive your petitioner from the business. Petitioner shows

22 that the said American Tobacco Company will not deliver at all, or will reluctantly deliver and sell such cigarettes where there is no competition with petitioner, but seeks to confine its efforts to flood the market with this cigarette where it competes with petitioner in order to destroy petitioner, all as part of its conspiracy to restrain and monopolize the tobacco trade. Petitioner shows that as a result of the acts of said defendant *his* sales in cigarettes have decreased from 130,430,000 in 1907 to 15,504,000 in 1911.

Thirteenth. Your petitioner shows that similar action has been, and is being taken by the defendant, the American Tobacco Company, and its allied companies, and the individuals named with respect to the smoking and chewing tobacco business; that defendants *have* put out and maintained a fighting brand of tobacco to fight petitioner's brand with the objects and purposes aforesaid, to-wit a brand called "Victory" tobacco which is put on the market by defendants, a two ounce package for 5 cents, and sold to compete with petitioner for the purpose heretofore detailed; that there is no other two-ounce package of Burley tobacco sold in the United States for 5 cents, and that same is not manufactured and sold at a profit, but is sold for the purpose of injuring petitioner.

Petitioner shows further that it had for a long time past manufactured and sold a brand known as "Klack Eye", and that recently defendants *have*, with objects and purposes heretofore stated, put on the market and now sell in competition with petitioner a brand called "Black Bird."

Now your petitioner shows that throughout the entire period, since petitioner's original suit was filed, and those associated with petitioner, have earnestly, diligently and persistently given attention to petitioner's business, that they have neglected nothing to further the same; that conditions generally have favored an increase of business,

and there has been an increase in such business generally,
23 but owing to the acts of the defendants, despite every effort made by petitioners the business of petitioners has constantly decreased and it has become well nigh impossible for *them* to continue; that by reason of the actions, conspiracies, restraint and monopoly, and the attempts to restrain and monopolize, petitioner has been damaged in the sum of One Hundred and Thirty Thousand Two Hundred and Ninety-nine Dollars and seventy-nine cents (130,299.79) as follows, to-wit:

In the year beginning June, 1908 and Ending June, 1909, petitioner lost the sum of \$6,966.02; in the term beginning June, 1909 and ending January, 1910 (seven months), petitioner lost the sum

of \$42,174.65; in the year from January, 1910, to January 1911, petitioner lost the sum of \$40,392.58; in the year beginning January 1st, 1911, and ending January 1st, 1912, petitioner lost the sum of \$40,766.52, or a total actual damage of \$130,299.79; that the said sum of each year is reached by taking the sum made in 1903, to-wit, \$40,282.43, and comparing the profit and loss of each year herein set out, with the profit and loss of said year 1903, which year forms a reasonable basis for comparison and a just and sound basis for statement of loss.

Petitioner shows that it makes no claim during the year from June 1907 to June 1908; that it was during this year that the Craft Tobacco Company, a company with which defendant had—as petitioner set out in petitioner's previous suit—conspired to injure your petitioner and drive it from the field of interstate business, gave up business, and it was during this year that the suit of the United States vs. American Tobacco Company was begun and the exposure incident thereto made, and that as a consequence of aforesaid facts,

petitioner was not, during said year, seriously injured in its
24 said business, as petitioner believes, and at all events its profits for said year were satisfactory, and no claim for any loss is therefore made for said period.

That petitioner is entitled to have judgment in three times the amount of said actual damage, sustained, to-wit, in the sum of \$390,899.31, together with attorneys' fees and costs, all of which will more fully appear from statements annexed, detailing above facts and how result is reached.

Your petitioner shows that by virtue of the acts of the defendant herein set out, by their continuation up to the present time, defendant has violated and has continued and is continuing to violate not only the laws of the United States known as the Sherman Anti-Trust Act, but has violated and has continued to violate the decree of the Supreme Court of the United States in the case of the United States vs. The American Tobacco Company and others; that said decree provides as follows:

Fourth. * * * Pending the bringing about of the result just stated (the dissolution of the company) each and all of the defendants, individuals as well as corporations, should be restrained from doing any act which might further extend or enlarge the power of the combination, by any means or device whatsoever."

The defendants, by virtue of their said acts, continued as aforesaid since the said decree, are violating the same.

Wherefore, petitioner prays that the defendant, the American Tobacco Company, through its proper officer, be duly cited and served with a copy of this petition and required to answer the same, and that, after all due and legal proceedings had, there be
25 judgment for plaintiff in the sum of One Hundred and

Thirty Thousand Two Hundred and Ninety-nine Dollars and seventy-seven cents (\$130,299.77), which should be trebled in accordance with the said Act of Congress so as to amount to Three Hundred and Ninety-Thousand Eight Hundred and Ninety-nine Dollars and Thirty-one cents (\$390,899.31); your petitioner prays

judgment against the said defendant for said sum with interest from date of judicial demand, and attorneys' fees and costs;

And for such further and general relief as petitioner may be entitled to receive.

(Signed)

MERRICK, LEWIS, GENSLER &
SCHWARZ, *Attorneys for Petitioner.*

26

EXHIBIT ATTACHED TO PETITION.

Filed January 4th, 1912.

June 1st, 1908, to June 1st, 1909.

Advertising	629.90
Cans and Jars	68.66
Cartoons	4,145.59
Cigarette Paper	3,906.89
Factory Fixtures	3.43
Flavoring	3,417.70
Labels	144.50
Leaf Tobacco	122,956.19
Machinery	19.29
Packing	817.19
Paper and Bags	3,181.18
Cigarette Stamps	70,200.00
Tobacco "	21,915.66
Snuff "	46.62
Tin Foil	393.43
Tools and Supplies	176.10
Coupons Redeemed	36,354.61
Drayage	1,415.30
Factory Expense	1,926.82
" Insurance	770.96
" Labor	33,197.50
Fuel	960.66
General Expense	1,710.31
Out Freight	437.87
Printing	302.67
Salary	12,480.00
Storage and Insurance	649.20
Traveling Expenses	1,326.75
	<hr/>
	\$323,820.03
Unredeemed Coupons	3,364.49
	<hr/>
	\$327,184.52
	<hr/>
Profit for year	\$33,316.41

	Tobacco.	Snuff.	Cigarettes.
June	29,462	64	10,385,000
July	30,795	80	13,320,000
August	32,833	37	10,620,000
Sept.	31,845	52	11,150,000
Oct.	30,431	31	12,080,000
Nov.	30,941	74	10,740,000
Dec.	30,879	68	9,730,000
Jan.	29,688	73	11,100,000
Feb.	25,141	93	8,550,000
March	31,963	41	10,910,000
April	31,047	60	13,060,000
May	30,596	74	8,470,000
	<hr/> 365,621	<hr/> 747	<hr/> 130,115,000

27

EXHIBIT ATTACHED TO PETITION.

Filed January 4th, 1912.

June 1st, 1909, to January 1st, 1910.

Advertising	719.74
Cans and Jars	31.42
Cartoons	3,362.30
Cigarette Paper	1,425.57
Coupons Redeemed	20,300.00
Drayage	850.35
Factory Expenses	1,480.58
" Fixtures	43.00
" Insurance	610.80
" Labor	18,909.75
Flavoring	1,803.54
Fuel	564.86
General Expense	944.84
Labels	214.54
Leaf Tobacco	73,797.61
Machinery	1,436.08
Out Freight	209.43
Packing	512.20
Paper and Bags	2,170.76
Printing	99.53
Salary	6,920.00
Cigarette Stamps	33,704.64
Tobacco "	12,545.88
Snuff "	31.80
Storage and Insurance	1,084.32
Traveling Expense	532.00

Tin Foil	148.69
Tools and Supplies	125.95
	<hr/>
	184,578.18
Over-Paid Coupons	593.90
	<hr/>
	\$183,984.28
	<hr/>
Loss for 7 Months	\$1,891.62
	<hr/>
	<hr/>
	Tobacco. Snuff. Cigarettes.
June	34,497 64 8,220,000
July	28,590 .. 8,020,000
August	29,952 87 9,220,000
Sept.	28,854 .. 9,865,000
Oct.	29,357 243 10,367,000
Nov.	30,034 90 8,183,000
Dec.	27,814 76 8,906,000
	<hr/>
	209,098 560 62,781,000

EXHIBIT ATTACHED TO PETITION.

Filed January 4th, 1912.

January 1st, 1910, to January 1st, 1914.

Coupons Redeemed	17,533.80
Advertising	2,564.33
Cans and Jars	76.74
Cartoons	3,796.76
Cigarette Paper	2,939.49
Drayage	1,460.50
Factory Expense	2,333.91
" Fixtures	5.50
" Insurance	1,193.54
" Labor	32,064.75
Flavoring	3,096.62
Fuel	926.79
General Expense	2,799.57
Labels	267.60
Leaf Tobacco	119,570.32
Machinery	1,582.97
Out Freight	611.02
Packing	951.77
Paper and Bags	3,456.93
Printing	111.46
Salary	11,450.00
Cigarette Stamps	55,759.86
Tobacco	25,358.34
Snuff	82.90

Storage and Insurance	2,614.80
Traveling Expense	2,147.16
Tin Foil	240.57
Tools and Supplies.....	125.56

\$295,123.56

Unredeemed Coupons	10,258.85
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\$305,382.41

Loss for year	\$110.15
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	Tobacco.	Snuff.	Cigarettes.
Jan.	33,526	120	10,244,000
Feb.	28,809	69	8,589,000
Mar.	34,124	120	10,770,000
Apr.	30,391	127	16,704,000
May	31,889	148	21,168,000
June	32,044	247	25,064,000
July	23,989	...	20,000
August	29,327	...	20,000
Sept.	29,931	162	.....
October	28,118	...	55,000
November	32,209	158	1,098,000
December	30,318	93	3,674,000
	<hr/> 364,675	<hr/> 1,294	<hr/> 97,406,000

29

EXHIBIT ATTACHED TO PETITION.

Filed January 4th, 1912.

January 1st, 1911, to January 1st, 1912.

Advertising	\$1,059.37
Cans & Jars.....	136.60
Cartoons	2,517.85
Cigarette Paper.....	398.46
Collection & ex.	85.14
Drayage	1,038.70
Factory Expense	1,057.55
Factory Insurance	1,957.79
Factory Labor	24,360.80
Flavoring	2,508.28
General Expense	2,351.18
Interest and Discount	7,407.17
Labels	86.52
Leaf Tobacco	68,080.36
Machinery	1,439.33
Out Freight	888.22

Packing Account	1,270.20
Paper and Bags	3,513.75
Printing	24.72
Salary	12,000.00
Cigarette Stamps	17,492.50
Tobacco "	29,837.18
Snuff "	125.76
Storage and Insurance	290.90
Traveling Expense	4,488.21
Tin Foil	657.81
Tools and Supplies	51.64
Coupons Issued	1,774.00

\$187,702.54

Loss for the year \$484.09

Production Account for Year 1911.

	Lbs. tobacco.	Cigarettes.	Lbs. snuff.
January	33,819	1,632,000	137
February	26,664½	1,451,000	150
March	33,129	1,864,000	85
April	30,091½	1,056,000	65
May	33,959½	1,129,000	133
June	31,343	2,065,000	217
July	29,133	1,142,000	46
August	32,539	1,308,000	205
September	30,452	1,120,000	95
October	32,419	1,050,000	125
November	28,587	795,000	155
December	30,875	892,000	205
	<hr/> 373,011½	<hr/> 15,504,000	<hr/> 1,618

30

Citation.

Issued January 4, 1912.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

District Court of the United States, Eastern District of Louisiana.

No. 14369.

PEOPLES TOBACCO CO., LTD.,
vs.
AMERICAN TOBACCO CO.

To the President of the United States of America to the American Tobacco Company, a corporation organized and created under the laws of the State of New Jersey, and a citizen of New Jersey doing business in the City of New Orleans, Louisiana, through its proper officer:

You are Hereby Summoned to comply with the demand contained in the petition of which a copy accompanies this Citation, or to deliver your answer to the same in the office of the Clerk of the District Court of the United States, for the Eastern District of Louisiana, in the City of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the Court is held.

Witness, the Honorable Rufus E. Foster, Judge of the said Court, at the City of New Orleans, this 4th day of January, A. D., one thousand nine hundred and twelve and of the Independence of the United States of America, the 136th year.

[SEAL.]

(Signed)

H. J. CARTER, *Clerk.*

Clerk's Office.

A true copy of the original.

New Orleans, La., January 4th, 1912.

[SEAL.]

(Signed)

H. J. CARTER, *Clerk.*

31

Marshal's Return on Citation.

Filed January 5th, 1912.

Received by U. S. Marshall, New Orleans, La. Jan. 4/12, and on the 5th day of the same month and year I served the original of which this writ is a certified copy together with a certified copy of plaintiff's accompanying petition on The Ameri-

can Tobacco Company, by handing the same to the Manager thereof, Mr. W. R. Irby, in person, in the City of New Orleans, La.

VICTOR LOISEL,
U. S. Marshal,

(Signed)

By E. M. KINLER,
Deputy U. S. Marshal.

32

Exception to the Jurisdiction.

Filed Jan. 16th, 1912.

STATE OF LOUISIANA:

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLES TOBACCO COMPANY
vs.
AMERICAN TOBACCO COMPANY.

Now, through its undersigned attorneys, specially appearing under protest and for the purpose of excepting and objecting to the jurisdiction of this Court and to the false return of the Marshal on the citation herein by which it is sought to make it appear that exceptor has been found within this district, and for no other purpose, comes the American Tobacco Company, defendant in the above entitled and numbered cause, and excepts to the jurisdiction of this Court and says that this Court is without jurisdiction to try this cause, and for grounds of exception avers:

That it appears from the allegations of plaintiff's petition herein, and exceptor avers the fact to be, that exceptor is a corporation created and organized under the laws of the State of New Jersey and is, therefore, a citizen and inhabitant of the State of New Jersey; that it is not, and never was, a corporation of the State of Louisiana, and is not and never was a citizen or inhabitant of this district or of the State of Louisiana.

That, moreover, exceptor has not been and cannot be found within this district for the reason that, and exceptor avers the fact to be that, it is not now, and was not at the date of the institution of this suit, engaged in business in the State of Louisiana and neither has

33 nor had at that time any agent in this State or district; that the said Irby, upon whom the petition and citation in this suit was served, was not either at the date of the institution of this suit or at the date of said service or at any subsequent time the manager or an officer or an agent or an employee of this exceptor and was not authorized to receive service of process for it, and the attempted service on him of said petition and citation does not constitute a finding of exceptor within this district.

That this Court is without jurisdiction *ratione personae*, whether its jurisdiction depends upon exceptor being an inhabitant of this

district or whether its jurisdiction depends only upon exceptor being found within this district.

Wherefore, exceptor prays that this exception to the jurisdiction be maintained and plaintiff's suit dismissed for want of jurisdiction.

(Signed)

JUNIUS PARKER,

(Signed)

DENEGRE & BLAIR,

Attorneys for American Tobacco Company, Exceptor.

J. P. Blair, being duly sworn deposes and says that he is of counsel for exceptor, the American Tobacco Company; that it is not otherwise represented in this State, having no officer or agent in Louisiana; that the statements of fact in the foregoing exception are true and correct to the best of affiant's information, knowledge and belief; and that said exception has not been filed for purpose of delay.

Sworn to and subscribed before me this 16 day of January, 1912.

(Signed)

J. P. BLAIR.

(Signed) HENRY H. CHAFFE,

[SEAL.]

Notary Public.

34

Citation.

Issued Jan. 20, 1912.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

District Court of the United States, Eastern District of Louisiana,
New Orleans Division.

No. 14369.

PEOPLES TOBACCO COMPANY, LTD.,

vs.

AMERICAN TOBACCO COMPANY.

The President of the United States of America to the American Tobacco Company, through the Honorable Secretary of State for the State of Louisiana, Greeting:

You Are Hereby Summoned to comply with the demand contained in the petition of which a copy accompanies this Citation, or to deliver your answer to the same in the Office of the Clerk of the District Court of the United States, Eastern District of Louisiana, in the City of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles of your place of residence is distant from New Orleans, the place where the Court is held.

Witness, the Honorable Rufus E. Foster, Judge of the said Court, at the City of New Orleans, this 20th day of January, A. D. one thousand nine hundred and twelve and independence of the United States of America the 136th year.

Teste:

[SEAL.]

(Signed)

H. J. CARTER, *Clerk.*

Clerk's Office.

A true copy.

N. O., La., January 20th, 1912.

[SEAL.] (Signed)

H. J. CARTER, *Clerk*.

35

Marshal's Return on Citation.

Filed January 25th, 1912.

Received by U. S. Marshal, New Orleans, La., Jan. 20, 1912, and on the 24th day of the same month and year I served the original of which this writ is a certified copy together with a certified copy of Plaintiff's accompanying petition on the American Tobacco Company by handing the same to Mr. Emile J. O'Brien, Ass't Secretary of the State of Louisiana in person, in the office of the Secretary of the State of Louisiana, at Baton Rouge, the Secretary of State being absent at the time of said service.

VICTOR LOISEL,
U. S. Marshal,

(Signed)

By T. F. LAICHE,
Deputy U. S. Marshal.

36

Exceptions.

Filed Jan. 31st, 1912.

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLE'S TOBACCO COMPANY
vs.
AMERICAN TOBACCO COMPANY.

Now, through its undersigned attorneys, not admitting but denying the jurisdiction of this Court, and appearing specially under protest for the purpose of excepting and objecting to plaintiff's attempt to give this Court jurisdiction by service of process herein on the Secretary of State, and of having said service declared illegal and null and without effect to constitute a finding of this defendant within this district, comes the American Tobacco Company, defendant, and for cause of exception says:

That since the filing of the exceptions herein on January 15, 1912, plaintiff has caused the citation and a copy of the petition herein to be served on the Secretary of State of Louisiana at Baton Rouge; that service of process as aforesaid on the said Secretary of State is unauthorized by law and void and without effect; that exceptor repeats and reiterates the averments of fact contained in its said first exceptions herein filed, namely, that it is a corporation

created and organized under the laws of New Jersey and is an inhabitant of said State and is not an inhabitant of this District or of the State of Louisiana; that it was not at the date of the institution of this suit or at any subsequent time engaged in any business in this District or State.

Wherefore, exceptor prays that its exceptions be maintained, the attempted service of process herein on the Secretary of State be decreed invalid, null and without effect, and that plaintiff's suit be dismissed for want of jurisdiction.

(Signed)

DENEGRE & BLAIR,

Attorneys for The American Tobacco Company, Exceptor.

J. P. Blair, being duly sworn, deposes and says that he is of counsel for The American Tobacco Company, exceptor and defendant herein; that said American Tobacco Company is not otherwise represented in this State, having no officer, agent or employee in this State; that the averments of fact in the foregoing exception are true, and that the exception is not interposed for purposes of delay.

(Signed)

J. P. BLAIR.

Sworn to and subscribed before me at New Orleans, Louisiana, on this, the 31 day of January, A. D. 1912.

(Signed)

HENRY H. CHAFFE,

[SEAL.]

Notary Public.

38

Citation.

Issued February 2nd, 1914.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

District Court of the United States, Eastern District of Louisiana.

No. 14369.

PEOPLES TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY.

The President of the United States of America to the American Tobacco Company, through Hon. Alvin E. Hebert, Secretary of State of the State of Louisiana:

You are Hereby Summoned to comply with the demand contained in the petition of which a copy accompanies this Citation, or to deliver your answer to the same in the office of the Clerk of the District Court of the United States, for the Eastern District of Louisiana, in the City of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles you- place of residence is distant from New Orleans, the place where the Court is held.

Witness, the Honorable Rufus E. Foster, Judge of the said Court,

at the City of New Orleans, this 2nd day of February, A. D. one thousand nine hundred and fourteen and of the Independence of the United States of America, the 138th year.

[SEAL.]

(Signed)

H. J. CARTER, *Clerk.*

Clerk's Office.

A True Copy.

[SEAL.]

(Signed)

H. J. CARTER, *Clerk.*

New Orleans, La., February 2nd, 1914.

39

Marshal's Return on Citation.

Filed February 9th, 1914.

Received by U. S. Marshal, New Orleans, La., Feb'y 2/14, and on the 6th day of the same month and year I served the original of which this writ is a certified copy together with a certified copy of plaintiff's accompanying petition on the American Tobacco Company by handing the same to Hon. Alvin E. Hebert, Secretary of the State of Louisiana, in person, in the City of Baton Rouge, Louisiana.

VICTOR LOISEL,

U. S. Marshal,

(Signed)

By E. M. KINLER,
Deputy U. S. Marshal.

40

Exceptions.

Filed February 17th, 1914.

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLES TOBACCO COMPANY,

VS.

AMERICAN TOBACCO COMPANY.

Now, through its undersigned attorneys, not admitting but denying the jurisdiction of this Court, and appearing specially under protest for the purpose of excepting and objecting to plaintiff's attempt to give this Court jurisdiction by service of process herein on the Secretary of State and of having said service declared illegal and null and without effect to constitute a finding of this defendant within this district, comes the American Tobacco Company, defendant, and for cause of exception says:

That since the filing of the exceptions herein on January 15, 1912, and on the 31 day of Jan'y 1912, plaintiff has caused a new citation and a copy of the petition herein to be served on the Secretary of State

of Louisiana, at Baton Rouge; that service of process as aforesaid on the said Secretary of State is unauthorized by law and void and without effect; that exceptor repeats and re-iterates the averments of fact contained in its said first exceptions herein filed, namely: that it is a corporation created and organized under the laws of New Jersey and is an inhabitant of that State and is not an inhabitant of this district or of the State of Louisiana; that it was not at the date of the institution of this suit or at any subsequent time engaged in any business in this District or State.

Wherefore exceptor prays that its exceptions be maintained, the attempted service of process herein on the Secretary of State be decreed invalid, null and without effect, and that plaintiff's suit be dismissed for want of jurisdiction.

(Signed)

DENEGRE, LEROY & CHAFFE,

Attorneys for The American

Tobacco Company, Exceptor.

41 George Denegre, being duly sworn, deposes and says that he is of counsel for the American Tobacco Company, exceptor and defendant herein; that said American Tobacco Company is not otherwise represented in this State, having no officer, agent or employee in this State; that the averment of fact in the foregoing exception are true, and that the exception is not interposed for purposes of delay.

(Signed)

GEO. DENEGRE.

Sworn to and subscribed before me at New Orleans, Louisiana, on this, the 16th day of February, A. D., 1914.

[SEAL.]

(Signed)

HENRY H. CHAFFE,

Notary Public.

42 *Hearing on Exceptions to Jurisdiction in Part and Continuance to December 19th, 1914.*

Extract from the Minutes.

November Term, 1914.

NEW ORLEANS, Friday, December 18th, 1914.

Court met pursuant to adjournment;
Present: Hon. Rufus E. Foster, Judge.

No. 14369.

PEOPLES TOBACCO CO., LTD.,

vs.

AMERICAN TOBACCO COMPANY.

This cause came on this day to be heard upon the exceptions to the jurisdiction, filed by the defendant to the petition herein;

Present: George Denegre and Junius Parker, of counsel for defendant and exceptors;

“ Edwin T. Merrick and Ralph J. Schwarz, of counsel for plaintiff in suit;

Whereupon, after hearing the pleadings, evidence and testimony in part, it was ordered by the Court that this cause be continued until to-morrow morning at 11 o'clock, for further hearing.

43 *Further Hearing on Exceptions to Jurisdiction and Continuance to Dec. 21, 1914.*

Extract from the Minutes.

November Term, 1914.

NEW ORLEANS, Saturday, December 19th, 1914.

Court met pursuant to adjournment;

Present: Hon. Rufus E. Foster, District Judge.

No. 14369.

PEOPLES TOBACCO CO., LTD.,

vs.

AMERICAN TOBACCO COMPANY.

This cause, as continued from yesterday, came on this day for further hearing upon the exceptions to the jurisdiction filed by the defendant to the petition herein, counsel for the respective parties being present;

Whereupon, after hearing further evidence and testimony and arguments of counsel in part, it was ordered by the Court that this cause be continued until Monday, December 21st., 1914, at 11 o'clock A. M., for further hearing.

44 *Further Hearing on Exceptions to Jurisdiction and Submission.*

Extract from the Minutes.

November Term, 1914.

NEW ORLEANS, Monday, December 21st, 1914.

Court met pursuant to adjournment;

Present: Hon. Rufus E. Foster, Judge.

No. 14369.

PEOPLES TOBACCO CO., LTD.,

vs.

AMERICAN TOBACCO COMPANY.

This cause, as continued from Saturday, December 19th., 1914, came on this day for further hearing upon the exceptions to the

jurisdiction filed by the defendant to the petition herein; counsel for the respective parties being present;

Whereupon, after hearing further arguments by counsel for the respective parties, the matter was submitted,—when the Court took time to consider.

45

Defendant's Testimony.

Filed January 10th., 1916, nunc pro tunc as of Date December 21st, 1914.

United States District Court, Eastern District of Louisiana.

No. —.

PEOPLES TOBACCO COMPANY

vs.

AMERICAN TOBACCO COMPANY.

Testimony Taken in the Above Numbered and Entitled Cause in Open Court Before the Hon. Rufus E. Foster, United States District Judge, on the 18th Day of December 1914.

Appearances:

Mr. George Denegre and Mr. Junius Parker of counsel for defendant.

Mr. R. J. Schwarz and Mr. E. T. Merrick counsel for plaintiff.

46

December 18, 1914.

NOTE.—On the question of counsel for the Peoples Tobacco Company as to whether the cause, if appealed, will go up on the facts submitted, the court ruled that it would, in accordance with the case cited in the 169 U. S., page 115; and the ruling of the court was agreed to by counsel for The American Tobacco Company.

Offer:

Mr. Denegre: We offer, introduce and file in evidence, certified copy of the decree of the Circuit Court of the United States for the Southern District of New York, in the case of the United States Government against the American Tobacco Company et als, dated November 16, 1911.

Objection:

Mr. Schwarz: We object to that unless counsel states when it was carried out.

Objection:

Mr. Merrick: We also object on the ground that it is not shown that it is the complete and entire proceedings in that suit.

The Court: It is a decree, is it not?

Mr. Parker: Yes sir.

The Court: I take it if the decree is admissible, it ought to carry its own evidence with it.

Mr. Merrick: I reserve a bill to the ruling of the Court.

Mr. Schwarz: You admit that considerable time was given for the carrying out of the decree in addition to the time allowed by law?

47 Mr. Parker: The decree speaks for itself.

Mr. Schwarz: On that point?

Mr. Parker: I think it does.

Offer:

Mr. Denegre: We offer, introduce and file in evidence depositions of Percival S. Hill and Josiah T. Wilcox, taken pursuant to notice before Charles S. Allen, Notary Public, in the City of New York, on the 5th day of February, 1912; also exhibits annexed to said depositions.

Objection:

Mr. Merrick: To which offer counsel for plaintiff objects for the reason stated at the time said depositions were taken and at the time said documents were offered.

The Court: You are simply renewing the objections which were noted at the time of the taking of the depositions?

Mr. Merrick: That is right.

The Court: You don't object to the form of the depositions or anything of that sort?

Mr. Merrick: No sir.

Offer:

Mr. Denegre: We also offer in evidence two exhibits, being Hill, Exhibit 1 and Hill, Exhibit 2, which were noted but not offered in evidence before the Commissioner.

(Thereupon Mr. Denegre proceeded to read the deposition of Percival S. Hill.)

(Objection noted by Mr. Merrick before the depositions were proceeded with.)

48 Mr. Merrick: Before going into this testimony, counsel for plaintiff objects to the taking of testimony on the ground that the questions involved under the exceptions are matters of law entirely; that there has been no denial set up in the exceptions that the power of attorney given by the American Tobacco Company to the Secretary of State has never been revoked.

The Court: I over-rule the objection.

Mr. Merrick: I reserve a bill of the ruling of the Court.

(Question by Mr. Blair:)

Q. Was W. R. Irby at either of those dates an officer, or agent, or employe of the American Tobacco Company?

Mr. Merrick: I object to the question on the ground that the power

of attorney of the American Tobacco Company cannot be contradicted by the evidence of the witness.

The Court: I over-rule the objection.

Mr. Merrick: I reserve a bill to the ruling of the Court.

(Question by Mr. Blair:)

Q. Had he, at the time of either of these dates, any authority from the American Tobacco Company to receive service of process for it?

Mr. Merrick: I object to that as a matter of opinion of the witness, and I make the same objections previously made.

The Court: I over-rule the objection.

Mr. Merrick: I reserve a bill to the ruling of the Court.

(Question by Mr. Blair:)

Q. When did he cease to be an agent or employe of the company?

49 Mr. Merrick: I object to that on the ground that it is leading, and that he never has ceased.

The Court: I over-rule the objection.

Mr. Merrick: I reserve a bill to the ruling of the Court.

(Question by Mr. Blair:)

Q. Was there any formal revocation of his authority to receive service of process?

Mr. Merrick: I object to any verbal evidence to prove that, on the ground that it is not the best evidence.

The Court: It would not apply to the introduction of facts. As a matter of law, you may be right, but still it doesn't effect the introduction of this evidence.

Mr. Merrick: I reserve a bill to the ruling of the Court.

(Question by Mr. Blair:)

Q. Did you, at the time you revoked the power of attorney of Mr. Irby, revoke the power of attorney of any other agent of the American Tobacco Company in any other states wherein it had ceased to do business?

Mr. Merrick: That is objected to as irrelevant.

The Court: I sustain that objection.

(Question by Mr. Blair:)

Q. When the American Tobacco Company ceased to do business, export or otherwise, in New Orleans, state whether or not, in your judgment, the power of attorney to any party, given in reference to such business, ceased?

Mr. Merrick: I object to that as a mere matter of opinion of the witness; that is a law question.

The Court: I over-rule the objection.

Mr. Merrick: I reserve a bill to the ruling of the Court.

(Question by Mr. Blair:)

50 Q. Did you consider that you had full authority to revoke agencies in reference to that business in Louisiana and in New Orleans?

Mr. Merrick: Objected to as a matter of opinion, and also as contradicted by the fact that the witness brought the matter before the Board of Directors afterwards.

The Court: Objection over-ruled.

Mr. Merrick: I reserve a bill to the ruling of the Court.

NOTE.—Counsel for the American Tobacco Company then proceeded to read the deposition of Josiah T. Wilcox.

(Offer by Mr. Blair:)

Offer: Counsel also offers in evidence and files with the deposition of the witness, a certified extract from the minutes of the Board of Directors of the American Tobacco Company, held in the city of New York, on December 1, 1911, as to said resignation, which the stenographer is requested to mark Wilcox, Exhibit 2.

Mr. Merrick: That is objected to as not the best evidence.

The Court: The objection is over-ruled.

Mr. Merrick: To which ruling of the Court counsel for plaintiff reserves a bill to the ruling of the Court.

Offer:

Mr. Denegre: We offer in evidence Deed of Sale of the American Tobacco Company to the Liggett and Myers Tobacco Company, of its business, pursuant to the decree in the Government's suit. We offer in evidence the original of said Deed of Sale with leave of Court to withdraw same and substitute a copy thereof.

Mr. Merrick: Objected to as irrelevant and immaterial and res inter alios acta. I am not objecting to their substituting
51 a copy, but to the proof.

Objection.—Mr. Schwarz: We further object to this document on the ground that it purports to recite important facts in connection with the transfer of the business and interest of the American Tobacco Company, without any opportunity for examination or cross-examination with respect to the facts recited therein.

The Court: Objection over-ruled.

Mr. Merrick: A bill is reserved to the ruling of the Court.

W. R. IRBY, witness sworn and examined on behalf of exceptor and defendant, testified as follows:

Direct examination.

By Mr. Denegre:

Q. What is your name?

A. W. R. Irby.

Q. You were once connected with the American Tobacco Company, were you not?

A. Yes sir.

Q. When did your connection with the American Tobacco Company cease?

A. The first of December, 1911.

Q. Are you now connected with the Liggett and Myers Tobacco Company?

A. Yes sir.

Q. When did you become connected with the Liggett and Myers Tobacco Company?

52 A. First of December, 1911.

Q. What was the cause of your severing your connection with the American Tobacco Company?

A. Under the decree of the Supreme Court, the American Tobacco Company was dissolved or formed into separate groups, one of which was the Liggett and Myers Tobacco Company, and I became a director of that particular group.

Q. What became of the business of the American Tobacco Company in the City of New Orleans?

A. It was sold to the Liggett and Myers Tobacco Company.

Q. Who is the manager of the Liggett and Myers Tobacco Company in this City?

A. I am.

Q. Have you had any connection whatsoever with the American Tobacco Company since the first of December, 1911?

A. No, none at all.

Q. Have you drawn any salary from the American Tobacco Company since that time?

A. No sir.

Cross-examination.

By Mr. Schwarz:

Q. You were the representative and general agent here for the American Tobacco Company for a number of years, were you not?

A. Yes sir.

Q. For how many years?

A. I cannot say. That is a matter of record. I really cannot say.

53 Q. Well, to the best of your recollection?

A. Ten or fifteen years, probably.

Q. You were also a member of the Board of Directors of the American Tobacco Company, were you not?

A. Yes, sir.

Q. The American Tobacco Company during all those years carried on their business in this State, did it not?

A. Yes, sir.

Q. Sold its goods?

A. Yes, sir.

Q. Was it a custom of the American Tobacco Company to send out circulars with respect to the sale of its products?

A. That was a very general custom; I dare say they did.

Q. I show you a circular; will you look at that and say if that is a circular——

(Hands witness circular referred to).

A. This is a New York circular; it did not emanate from our branch.

Q. Is that a type of the circular which was sent here and throughout the state of Louisiana?

A. I would not say that; there were so many kinds and sizes and conditions that you cannot call it a type.

Objection.

Mr. Denegre: I want to object; he has asked the witness about a circular which is dated December 9, 1911, of the American Tobacco Company, and the witness has sworn that he severed his connection with the American Tobacco Company on December 1, 1911. I object to the testimony as irrelevant.

The Court: I do not know what the circular is, or what the purpose of the cross-examination is.

Mr. Schwarz: I prefer not to go into that for the moment. It is a circular sent out by the American Tobacco Company with respect to the business it is doing.

The Court: Let me see the circular.

(Counsel hands circular to the Court.)

Q. Mr. Irby, will you please look at this batch of circulars and state whether, from your long connection with the American Tobacco Company, these circulars are the same circulars that were sent out throughout the State of Louisiana during the time of your connection with the company, all that style?

(Hands witness document referred to.)

A. These are all after December 1, 1911, so I could not have seen them possibly. I was not in a position to see any of their circulars after that date.

Q. Do I understand you to say that because these were after December 1, 1911, you are not in a position to say whether this style of circular is what the American Tobacco Company sent out?

A. No, this is a style of circular sent out by the tobacco interests generally.

Q. You answer now that was the general type of circular that was sent out by the American Tobacco Company?

Mr. Parker: He didn't say that.

A. By the tobacco interests generally. There are some short and some very long; you cannot call it a type; there was no such thing a type.

Q. Have you any doubt in your own mind that these are circulars of the American Tobacco Company?

Objection.

Mr. Denegre: That is asking for an opinion of the witness. He is on the stand to swear to facts.

The Court: Is there not some way to show that the American Tobacco Company did send out those circulars? He says he does not know.

Mr. Parker: Will counsel be aided by an admission that they are circulars sent out by the American Tobacco Company?

Mr. Schwarz: Are you prepared to admit that these circulars were issued by the American Tobacco Company and sent into the state of Louisiana; I mean those that are named American Tobacco Company?

Mr. Parker: If your Honor, please, in order to save time and without any knowledge of the facts, I will admit that the circular dated December 9, 1911, headed American Tobacco Company, was mailed by the American Tobacco Company from its New York office to customers, whether in Louisiana or not I do not know.

I admit a like condition as to circular dated February 17, 1912, purporting to have been issued by the American Tobacco Company.

I admit that the circular dated May 15, 1912, purporting to be issued by the American Tobacco Company was mailed from New York to merchants residing in Louisiana, Texas, Arkansas and Oklahoma, because it is so addressed.

56 I admit that the circular dated July 10, 1912, purporting to be issued by the American Tobacco Company was mailed by the American Tobacco Company to merchants in Louisiana.

I admit that the circular dated December 15, 1912, purporting to be issued by the American Tobacco Company was mailed by the American Tobacco Company from its New York office to customers. I do not know where located.

I admit that the circular dated April 12, 1913, purporting to be issued by the American Tobacco Company was mailed by the American Tobacco Company from its New York office to merchants, some of whom are located in the state of Louisiana.

I admit what purports to be a copy of a letter dated May 3, 1913, with a fac-simile signature of P. S. Hill, President, was mailed by the American Tobacco Company from its New York office to its customers in general—I do not know whether in Louisiana or not.

I admit that the circular which purports to be issued by the American Tobacco Company under date of November 25, 1911, was mailed by the American Tobacco Company from its New York office to its customers; I am not able to say whether its customers were in Louisiana or not.

I admit that the American Tobacco Company, under date of May 31, 1911, mailed from its New York office to certain customers a circular as shown, on that date, and the circular is No.
57 344.

I admit that on July 31, 1911, the American Tobacco Company issued from its New York office to certain of its customers a circular such as is here shown.

I admit that the American Tobacco Company, under date of December 13, 1911, issued circular No. 512 from its New York office to merchants in certain states, including the state of Louisiana.

I admit that the American Tobacco Company issued from its New York Office on January 2, 1912, circular No. 531, which was sent to various merchants, but I do not know where.

I admit that the American Tobacco Company, on January 26, 1912, issued from its New York office, circular No. 538, and mailed it from New York to certain merchants, I do not know where.

The same admission is made as to circular No. 540, dated February 1, 1912, issued to certain merchants, but I do not know where; and the same as to circular No. 539, of February 1, 1912.

Mr. Schwarz: You will further admit that if the American Tobacco Company had any customers in the state of Louisiana, these circulars were sent to those customers as to others.

Mr. Parker: No, because I do not know, because certain circulars are mailed generally and some were not, and that is true even though the designation does not appear.

Mr. Schwarz: What I want to find out is whether you
58 are prepared to admit that in those circulars going to Louisiana, if you had customers in Louisiana.

Mr. Parker: I do not know anything about it, because the brands mentioned may not have been marketed in Louisiana, and the mere fact it is not limited on the face of the circulars does not indicate necessarily they were mailed generally.

Offer.

Mr. Schwarz: We offer in evidence the various circulars issued by the American Tobacco Company with respect to which admission was just made.

Q. Mr. Irby, I show you a circular headed W. R. Irby Branch of the American Tobacco Company, dated January 16, 1911, and another one of October 7, 1911; will you state whether or not those were circulars sent out by the American Tobacco Company?

(Counsel hands witness circulars referred to).

A. Those are circulars printed W. R. Irby Branch of the American Tobacco Company, but I cannot swear they were sent out.

Q. By whose direction were they printed?

A. I, of course, assumed the responsibility; they were printed, ordered printed, probably by Mr. Perrini, who is summoned, I believe, by either side, and I cannot swear these circulars were sent out, even though they were printed in our place.

Q. It was customary to print circulars of that kind?

A. Yes, sir.

Q. Have you any reason to doubt they were sent out?

A. None at all.

Q. These circulars from the American Tobacco Company, some

59 of which were shown you a few moments ago, and some of them are prior to December 1, 1911, were they always, during the course of your administration, circulars of that kind, sent out in Louisiana by the American Tobacco Company?

A. That would not necessarily come under my notice. They could send circulars out from the head office, you know, about brands that we knew nothing about, and I may not have seen one in a hundred possibly, that was coming to the Irby Branch.

The Court: What is the relevancy of these circulars, these circulars prior to December 1, 1911?

Mr. Schwarz: You see, some of them are prior, and some of them are after.

The Court: There was no W. R. Irby Branch after?

Mr. Schwarz: The American Tobacco Company, and not the Irby Branch, is the defendant in this case, and you see the structure—

The Court: If the American Tobacco Company is shipping goods into Louisiana from New York, of course that would not be doing business in Louisiana, in the meaning of the statute, would it?

Mr. Schwarz: That is a nice question, if Your Honor please.

Mr. Denegre: What is the relevancy of those prior to December 1, 1911?

Mr. Schwarz: We are entitled to show a continuous line of conduct; we have some cases that indicate that has been done for several years past.

Q. Now, Mr. Irby, were circulars of the kind we have shown you, admitted to have been sent out by the American Tobacco Company from New York, ever distributed by the Irby Branch in Louisiana?

60 A. Not to my knowledge; I do not recollect any such thing.

Q. In other words, no circulars of the kind we have shown you were ever sent out by the Irby Branch?

A. I do not recollect anything of that sort being done.

Q. Did you, yourself, sell on behalf of the American Tobacco Company—when I say you, I mean the Irby Branch, any brands referred to in any of these circulars we have shown you. Of course, I mean those issued by the American Tobacco Company?

A. Our efforts were altogether on the product of the Irby Branch and I cannot recall marketing or taking up the details of the marketing of the American Tobacco Company's other brands.

Mr. Parker: I understand you are now interrogating him as to the course of business before December 1, 1911?

Mr. Schwarz: Yes.

Witness: That is understood.

Mr. Schwarz: That is what I am asking.

Witness: Except some Rid La Croix cigarette paper, that was an agency they had at that time.

Q. You sold that?

A. Yes sir.

Q. How about some of their brands of cigars, cigarettes, or tobacco, mentioned in those circulars that were admitted to have been sent out by the New York office of the American Tobacco Company? Will you state whether or not the Irby Branch ever sold any of those?

A. I do not recall selling any of those, but the Sales Manager Perrini, whom you have summoned, will give you these
61 details; it was in his particular department. I really have no recollection of selling anything except cigarette paper and Red Cross Tobacco, possibly we sold that.

Q. Is that one of *Lorillards*?

A. Yes sir, that is one; they were with the American Tobacco Company.

Q. That was the only brand mentioned in the circulars issued from the New York office?

A. I didn't see that; I think. We were acting—They sold them here and billed them from New York; it was a matter of convenience on the part of the Company. We certainly acted in any capacity we could to facilitate the business, but I have no recollection of those details of selling any particular brand that I saw here; in fact, I did not see the Red Cross especially.

Q. How about U. S. Marine?

A. I have no personal recollection of selling it. I repeat though, that as a matter of facilitating the business in this section, they would use us as a warehouse, or forwarding agents, or in any capacity that they could.

Q. And you would carry out, in other words, the sales that were made, in accordance with the circulars that were issued from the home office, if those were the instructions?

A. Not necessarily. We carried out any instructions they gave us in the premises, whatever they might be.

Q. You said a moment ago that the Lorillard Company was, at the time you are speaking of, part of the American Tobacco Company, that is, prior to Dec. 1, 1911?

62 A. Yes sir, their brands.

Q. And the company itself was then?

A. It was not known as any company—Yes sir, it was I believe. You will have to get Mr. Parker to untangle that for you, because there was some—I believe that was an exception in the whole family in some way.

Mr. Schwarz: There is another matter with Mr. Parker, and that is with the British-American Tobacco Company, prior to the execution of the decree of dissolution, the majority of stock in that was held by the American Tobacco Company?

Mr. Parker: I admit that the majority of the stock of the British-American Tobacco Company, but not all of the stock, up to December 1, 1911, was held by the American Tobacco Company.

Q. Mr. Irby, did you ever hear of the Black Horse Warehouse Tobacco Company?

A. Yes sir.

Q. Would you state who was the general manager for that company in Louisiana?

A. That was owned by the British-American Company; we acted as their shipping agents, or forwarding agents.

Q. Who are we?

A. The Irby Branch.

Q. Was there any other individual designated as agent or representative for them in Louisiana?

A. No; that I know of; it is a matter of record if there was. You mean for custom-house purposes, clearing shipments?

Q. No, I mean for the general transaction of business.
63 Who was the man here who had the authority to represent the Black Horse Warehouse Tobacco Company?

A. I don't know that any man had it. The Irby Branch is paid for making these shipments.

Q. What was your position with the Black Horse Warehouse Tobacco Company?

A. I don't know that I had any individual position with them. I certainly had no individual profit from it. Anything that was done for them was done by the Irby Branch.

Q. Did you act on behalf of that company, transact whatever business it had to transact in this State, either yourself or through the Irby Branch?

A. I do recall that we were forwarding agents, I know, and charged a fixed sum for our services; I have no doubt that we acted in any capacity that we were called upon to do, herein in New Orleans, in the way of delivering their goods.

Q. What business did they do in this state?

A. Some in the City of New Orleans; not outside, I don't think. No, it was mostly export business to Central America.

Q. Business in the city of New Orleans and Central American export?

A. Yes sir.

Q. Did you ever think it necessary to resign your connection with that company?

A. Resign with that company?

Q. Yes.

A. I didn't belong to that company that I know of.

Q. What is that?

64 A. I didn't belong to that company. We were engaged—the Irby Branch—as manager.

Q. As manager?

A. No. That is after the Irby Branch. This is after December 1, 1911, you are speaking of now?

Q. Yes.

A. We continued to represent, as I said, the British-American Tobacco Company as forwarding or shipping agents.

Q. A moment ago you used the word manager?

A. I don't know that I used it, probably you did?

Mr. Parker: As manager of the Irby Branch?

Witness: Manager of the Irby Branch.

Q. Did you find it necessary to send a resignation in of any kind from your agency or manager's office, or whatever you might choose to call it, to the Black Horse Warehouse Tobacco Company?

A. Not that I recollect. My recollection is that at headquarters they instructed us to continue this work for the British-American Tobacco Company; that is my impression.

Q. Who were headquarters?

A. Liggett and Myers Tobacco Company.

Objection:

Mr. Denegre: I object to that as irrelevant.

The Court: I do not see the relevancy of that.

Mr. Schwarz: I will state the relevancy. The British-American Tobacco Company, the chief ownership of stock was the American Tobacco Company, and the Black Horse Warehouse Tobacco Company is a part of the American Tobacco Company. Mr. Irby was the local representative of the Black Horse Warehouse Tobacco Company, I think, sometime in June or July, 1912, and doing business here in that respect.

65

The Court: Suppose he was, what then?

Mr. Schwarz: We think that was a part of the business of the American Tobacco Company, the carrying on of the original business of the American Tobacco Company which has been cut off.

The Court: It was the business of the British-American Tobacco Company, was it not?

Mr. Schwarz: They held the majority of the stock.

The Court: The stock in the British-American Tobacco Company was distributed to the stockholders of the American Tobacco Company?

Mr. Schwarz: Yes sir, but prior to that time it had gone on before. Until that distribution took place it was still in the same situation as heretofore, and during the time after December 1, 1911, and before that distribution took place, sometime in February, Mr. Irby was the representative of that company here.

The Court: The American Tobacco Company was held to be an illegal combination and they were told to unscramble themselves and get into various segments and the American Tobacco Company still remained as an entity. After the decree it does not make any difference what separate entity was doing business here, does it?

Mr. Schwarz: That decree, as you just heard counsel state, was not carried out until February 28, 1912, or thereabout. These gentlemen come in and say we stopped doing any business in your jurisdiction whatever after January 1, 1912.

66 The Court: The American Tobacco Company?

Mr. Schwarz: Until they carried out their whole scheme; this was a part of it.

Mr. Parker: If that is so, they did not need any proof, because, from all the evidence, the Black Horse Warehouse Tobacco Company was carrying on business here.

Mr. Schwarz: You admit that it is so?

Mr. Parker: I have no doubt that is so: The Black Horse was

doing business here and if we are doing business by virtue of owning stock in a corporation that is doing business here, they don't need anything more.

Mr. Merrick: Will you admit that Mr. Irby was the manager of the Black Horse Warehouse Tobacco Company?

Mr. Parker: No, I do not think he was.

Mr. Schwarz: Are you prepared to admit, Mr. Parker, that the Black Horse Warehouse Tobacco Company was a subsidiary of the British-American Tobacco Company?

Mr. Parker: No.

Mr. Schwarz: Or Matthews and Company?

Mr. Parker: No. I admit that in December, 1911, the Black Horse Warehouse Tobacco Company was a place of business here owned by W. S. Matthews and Company, and I admit at that time, December 1, 1911, the British-American Tobacco Company was one but not the only scheme of W. S. Matthews & Son.

Mr. Schwarz: Will you go a little further than that? Will you also admit that at that same time the American Tobacco
67 Company was the majority stockholder in the British-American Tobacco Company?

Mr. Parker: What do you mean by the same time?

Mr. Schwarz: December 1st?

Mr. Parker: Yes. Up to December 1st 1911 it was the majority holder but not the sole holder of British American stock.

Mr. Schwarz: Now, we want to find out from Mr. Irby when the Irby Branch of the American Tobacco Company which he said represented the Black Horse Warehouse business here when it ceased so to represent it or carried on business on its behalf?

Mr. Parker: I want that to be understood. He said the Irby Branch of the American Tobacco Company ceased.

Mr. Schwarz: That is so. He stated that the Irby Branch represented them. I want to know——

Witness: The Irby Branch of the American Tobacco Company ceased on December 1st to represent anybody except Liggett & Myers Tobacco Company.

Q. Have you any documents, letters, telegrams or anything else, to show that you all ceased to represent them?

A. We ceased to be, therefore I take it that everything stopped. We have books and records which will show.

Q. You said that an export business was done by the Black Horse Tobacco Company?

A. Yes sir.

Q. Did you on December 1st 1911 when you say that you all ceased to act in the capacity that you had theretofore acted give any notice, or make any note of that fact in the Internal Revenue Office here showing it?

68 A. I cannot swear to that. It might have been overlooked temporarily in a great mass of detail that we had to take up. I don't recollect having made a change. The records speak for themselves.

Q. So that if the records continued as they were theretofore you were apparently acting in the same capacity as theretofore?

A. Apparently, yes, not necessarily so though.

Q. Did you send any notice at any time to the Internal Revenue Department of the change in representation?

A. I could not say.

Q. You have no recollection of that?

A. It might have been done by the Matthews Company.

Q. I say you personally?

A. No I have no recollection of it.

Q. Where are the headquarters of the Matthews Company?

A. Louisville.

Q. Were you in Lynchburg, Virginia in July 1912?

A. I do not know.

Q. Were you in Petersburg?

A. No, not in Petersburg.

Q. Neither place?

A. I do not know. I go to Lynchburg, I have been going there for years. That is my old home, not on any business.

Q. Where did you say the headquarters of Matthews & Company were?

A. Louisville.

69 Q. At the time that this suit was filed, that is, during December 1911 and January 1912, what became of the standing accounts of the American Tobacco Company?

A. I don't recollect. I suppose they were transferred to New York.

Q. Did you or anybody acting for or with you have anything — do with the collection of any of them?

A. Not to my recollection.

Q. Who would know in your place of business if you did?

A. Mr. A. C. Dumestre the head of the office.

Q. Are you prepared to say you all did not have anything to do with them?

A. I would not say that.

Q. Does the American Tobacco Company sell its products here now?

A. Oh, yes.

Q. And it did sell it in December 1911 and January 1912?

A. Oh, yes, right along.

Q. In other words it kept on selling here after December 1st 1911 just as it did prior to that date?

A. It has never gone out of business.

Q. Did it deal with jobbers in this City and State?

A. As far as I know.

Q. It had salesmen in this City and State?

A. So I have heard.

Q. You know some of its salesmen do you not?

A. Not now. I do not come in contact with them personally. I do not know they have any out. I just heard so.

Q. I mean you know,—you have heard they have and you know who they are?

A. I do not know.

Q. In 1912 do you know who they were. I don't mean all of them?

70 A. I really could not say. I do not recollect any particular salesman.

Q. Do you know whether they had salesmen here in 1912?

A. No. I do not.

Q. How about 1911?

A. As far as I know they always had salesmen in every state. I could not say they were in Louisiana or who they were.

Q. Through all the years of your connection they had salesmen here selling?

A. Yes sir, as far as I recollect.

Q. And you don't know of anything to the contrary from 1911 on?

A. I did not keep any track of it after that?

Q. Did the American Tobacco Company do any export business here prior to December 1st, 1911?

A. I would have to refer to the records on that.

Q. What is your best recollection on it?

A. Before 1911?

Q. Before December 1st, 1911?

A. I think they did.

Q. Did they after?

A. No sir.

Q. Who made out the papers for them before December 1st 1911?

A. John Saulsbury and one of the Dumestres in his absence. I don't know which one would, either A. P. or A. C.

Q. Who gave them the authority?

A. I don't know whether—I imagine it came from New York, that is the only way they would accept it possibly in the Internal Revenue office, from the parent office. I would have done so

71 here if I had the authority, and I no doubt did so if I had the authority because I did everything of that kind that was necessary to the operation of this branch.

Q. Did those gentlemen act in the same capacity after Dec. 1st 1911?

A. No. All export brands were transferred to the British American then. We stopped exporting.

Q. Was notation of that fact made too in the Internal Revenue office?

A. It might have been overlooked in the great mass of detail for a time. Possibly it was done from headquarters. It might have been done too from this branch but I don't recollect it. That would be a matter of record in the Revenue office.

Q. How about orders that you all had on hand during November 1911 that were not yet filled on behalf of the American Tobacco Company. Did you continue to fill those orders?

A. I do not think so. I am not sure we did not. The records will show that too.

Q. You say you are not sure you did not?

A. Yes sir.

Q. You did not bill any goods after December 1st 1911 in the name of the American Tobacco Company.

A. No sir.

Q. You are sure about that?

A. Yes sir, there was no stationery left of the American Tobacco Company then.

Q. How about receiving checks. Did you get any checks for payment of accounts of the American Tobacco Company after December 1st 1911 or during January 1912?

A. They may have been sent to us and if so we likely forwarded them on to New York.

Q. Did you ever deposit any of them?

A. Not that I recollect.

Q. You had no power to endorse them any longer for the American Tobacco Company?

A. Not that I recall.

Q. Is that something you would be likely to recall?

A. No. Mr. A. C. Dumestre will give you all that information in detail.

Q. So you are not sure whether you did or did not continue to act so as to endorse any checks that came in?

A. I cannot imagine our doing so.

Q. But you are not prepared to swear that you did not?

A. No. It was a winding up of the business. It was done to the best advantage and — the quickest manner and legal manner under the decree of the court, whatever the stipulations were they were carried out.

Q. It took you all a little while to wind up did it not?

A. Not after December 1st. Everything was transferred on that day.

Q. Were all the interests of the American Tobacco Company wiped out altogether on the first of December in Louisiana?

A. As far as the Irby branch was concerned.

Q. Well, I do not understand what you mean by saying as far as the Irby Branch was concerned?

A. There was transferred the entire business to Liggett & Myers Tobacco Company.

Q. The American Tobacco Company had done other business besides the Irby Branch business in this State had it not?

A. Direct from headquarters or some other branches probably.

Q. And you had acted you say yourself in the sale of the la croix cigarette paper. Did you ever sell some of these other brands?

A. We might have done so.

Q. Don't you know you did?

A. Cigarette paper.

Q. How about red cross tobacco?

A. Cigarette paper is about the only thing I did know of that came from headquarters for distribution.

Q. You say you all acted as agents for cigarette paper. That is

called Riz la croix you say. How long did you continue to sell that paper?

A. I don't recollect. I don't think we sold it after the first of December. I don't know that they would sell it to us.

Q. Do you sell it now?

A. No sir.

Q. Did it ever appear on any of your cigarette packages, advertised for sale?

A. It may have been part of an old trademark that was left over.

Q. Was it continued after December 1st 1911?

A. Not that I know of.

Q. You never made any sale of the riz la croix paper after December 1st 1911?

A. Not that I know of.

74 Q. How about returns to the City Hall for license tax by the American Tobacco Company, were any of those made in 1912?

A. Not that I know of.

A. Do you sell goods now on behalf of the American Tobacco Company?

A. No sir.

Q. In any respect?

A. No sir.

Q. I mean do you act in the same way for convenience in *ferrying* any of their goods?

A. No sir.

Q. Do you know a brand called Tiger?

A. I know Tiger.

Q. Do you all sell that?

A. That was Matthews' brand. Tiger leaf tobacco.

Q. Did you all manufacture, I mean the Irby Branch, did it manufacture that?

A. That is not clear in my mind. I could not say. I would have to refer to the records on that.

Q. Who has those records?

A. Mr. A. C. Dumestre will produce all details of that kind or records.

Q. The American Tobacco Company did a credit business in Louisiana during the time you were Manager for it here did it?

A. Yes sir, to some extent.

Q. Did it ever take notes for payment?

A. Very seldom. I don't recall having taken any notes.

Q. Did you have any outstanding notes due on December 1st 1911?

75 A. Not that I recollect. There were open accounts. We did not close them by note.

Q. And the open accounts you all collected?

A. I don't know. I don't recall that.

Q. Mr. Dumestre know about that?

A. Yes sir.

Q. At the time that you were serve- with the summons in this

case? You were served were you not by the Deputy United States Marshal?

A. For this case to day?

Q. No. I mean originally in January 1912, the Deputy Marshal brought you a service of process which he left with you did he not?

A. I don't recall anything he did in 1912, I suppose so, if that is the general procedure.

Q. You cannot recall clearly whether the Marshal ever brought this to you?

A. No sir.

The Court: Does not the return speak for itself?

Mr. Parker: There is no denial of it.

Mr. Schwarz: I want to recall the conversation with the Marshal at the time that the paper was left.

Q. At the time that the paper was left with you what did you do?

A. Well, if it had anything to do with the American Tobacco Company I declined to accept it as I was not the representative of that Company.

Q. Did you state that at the time?

A. That is my recollection. That is about all I could say. I refused to accept it.

76 Q. Do you know whether you did say that?

A. Yes sir, that is the purport of it, I don't know whether they were those exact words.

Q. You took it up with the counsel right away?

A. I suppose so. They guided us in ever-direction.

Q. Mr. Blair at that time was the local counsel?

A. Denegre & Blair.

Q. Had you been advised beforehand about the service of this summons upon you?

A. I don't recollect that.

By Mr. Denegre:

Q. When did you resign as a director of the American Tobacco Company?

A. November 29th, 1911.

Q. Is the Liggett & Myers Tobacco Company a competitor of the American Tobacco Company?

A. Decidedly.

Q. And has been since December 1st 1911?

A. Very actively.

77 The President of the United States of America to all to whom these presents shall come, Greeting:

Know Ye, that we have inspected the records and files of the District Court of the United States for the Southern District of New York, — do find certain paper writings there, remaining of

78 record, in the words and figures, following, to wit:

Certified Copy of Decree of the Circuit Court of the United States for the Southern District of New York in the Case of the United States Government against the American Tobacco Company et als., Dated November 16th, 1911.

Filed December 18th, 1914.

In the Circuit Court of the United States for the Southern District of New York.

E 1—216.

UNITED STATES OF AMERICA

vs.

THE AMERICAN TOBACCO COMPANY and Others.

Decree.

Endorsed: U. S. Circuit Court, Southern District, N. Y. Filed Nov. 16, 1911. (Signed) John A. Shields, Clerk.

79 & 80 In the Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, Plaintiff,
against

THE AMERICAN TOBACCO COMPANY and Others, Defendant.

Decree.

Appeals having been taken by the plaintiff and certain defendants in this cause from the decree entered by this Court on the 15th day of December, 1908, the Supreme Court of the United States reversed said decree and issued its mandate filed herein on the 30th day of June, 1911, by which the said cause was remanded to this Court with directions to enter a decree in conformity with the opinion of the Supreme Court of the United States, and to take such further steps as might be necessary to fully carry out said directions. By the said opinion of the Supreme Court of the United States this Court was directed to "hear the parties by evidence or otherwise as it may deem proper, for the purpose of ascertaining and determining upon some plan or method of dissolving the combination, and
81 of recreating out of the elements now composing it a new condition which shall be honestly in harmony with, and not repugnant to, the law, but without unnecessary injury to the public or the rights of private property." And this cause having come on to be finally heard pursuant to the order or decree of this Court, made and entered herein on August 3, 1911, on the mandate of the Supreme Court of the United States as aforesaid, The American Tobacco Company and the other defendants herein (except United

Cigar Stores Company, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, and R. P. Richardson, Jr., & Company, Incorporated), filed in this Court, on October 16, 1911, a petition proposing and embodying a plan or method of dissolving the combination, and of recreating out of the elements now composing it a new condition in harmony with, and not repugnant to, the law. Due notice was given to the parties hereto that the hearing on the said petition would be had on October 30, 1911, in Room 124 of the Federal Building, in New York City; and thereafter, to wit: on the 19th day of October, 1911, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, filed a petition.

At the time and place aforesaid, the plaintiff filed answers to the said petitions, embodying proposed modifications of, and additions to, the plan proposed in said petition of The American Tobacco Company and other defendants. The parties having been heard by counsel, and certain of the modifications of said plan included in the answer of the plaintiff not being opposed by the proponents of said plan, and others of said modifications included in said answer having been disposed of by this Court in its opinions delivered after said hearing;

Now, it is ordered, adjudged and decreed, that all the defendants—
except Welford C. Reed, who died before the final hearing—
82 heretofore became parties to and engaged in the combination
assailed in the pleadings, which “in and of itself, as well as
each and all of the elements composing it, whether corporate or
individual, whether considered collectively or separately,” is “in
restraint of trade and an attempt to monopolize, and a monopoliza-
tion within the first and second sections of the Anti-trust Act,” and
which should be dissolved and a new condition brought about in
harmony with and not repugnant to the law, either as a consequence
of the action of this Court in determining an issue or in accepting a
plan agreed upon.

And, it is further ordered, adjudged and decreed that said plan as
modified by the consent of the parties, or through the action of this
Court as aforesaid, is as follows, to wit:

A.

Dissolution of Amsterdam Supply Company.

Amsterdam Supply Company is a company engaged in the business of purchasing for a commission or brokerage, supplies, other than leaf tobacco, its principal customers being defendant corporations herein. It has \$235,000 at par of stock, all held in varying amounts by certain corporation defendants, one or the other of your Petitioners, and a surplus of \$127,058.74.

It is proposed that Amsterdam Supply Company be dissolved, converting its assets into cash and distributing them to its stock holders.

Abrogation of Foreign Restrictive Covenants.

Under the contracts of September 27, 1902, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, and certain of its directors agreed not to engage in the business of manufacturing or selling tobacco in the United States; The American Tobacco Company and American Cigar Company and certain of their directors agreed not to engage in the business of manufacturing or selling tobacco in Great Britain and Ireland; and American Tobacco Company, American Cigar Company and The Imperial Tobacco Company agreed not to engage in the business of manufacturing or selling tobacco in countries other than Great Britain and Ireland and the United States. Under the provisions of these contracts British-American Tobacco Company, Limited, was organized and took over the export businesses of The American Tobacco Company and The Imperial Tobacco Company, with factories, materials and supplies.

It is proposed that the covenants herein just described, as well as all covenants restricting the right of any company or individual in the combination to buy, manufacture or sell tobacco or its products, be rescinded by the affirmative action of the respective parties thereto who are parties to this suit, except such of said covenants, whether or not contained in the contracts of September 27, 1902, as (a), relate wholly to business in foreign countries and are covenants the benefit whereof has been assigned or transferred to other parties; or (b), are covenants exclusively between foreign corporations and relating wholly to business in or between foreign countries; and that

84 the said contracts of September 27, 1902, be altogether terminated so far as they impose any obligations upon any of the parties thereto to furnish or refrain from furnishing manufactured tobaccos to any party, each company to treat as its own, but only to the extent provided for in said contracts, all brands and trade-marks which by said contracts it was given the right to manufacture and sell, the said rights having been perpetual and constituting in effect a conveyance of the brands and trade-marks used for the countries in which they were so used by each of said companies as aforesaid.

C.

Abrogation of Domestic Restrictive Covenants.

It is proposed that covenants given by vendor corporations, partnerships or individuals, or by stockholders of vendor corporations, to vendee corporations defendants herein, not to engage in the tobacco business or any other business in any way embraced in the combination, be terminated so that all such covenantors shall be at liberty to engage in the business of buying, manufacturing and dealing in tobacco and its products just as if such covenants had not been made.

D.

Disintegration of Accessory Companies.

(1.)

The Conley Foil Company.

The Conley Foil Company has a capital stock of \$825,000 at par, all of one class, of which The American Tobacco Company owns \$495,000 at par, the balance being held by persons not defendants nor connected with defendants. It is engaged in the business of manufacturing tin foil, a product used largely by tobacco manufacturers, but having other uses as well. The Conley Foil Company has a plant in New York City, and it owns all the stock and bonds of The Johnston Tin Foil and Metal Company, which has a plant in St. Louis. The value of the output for the year 1910 of The Conley Foil Company was \$1,780,526.85, with a net profit of \$273,299.82, and The Johnston Tin Foil and Metal Company had an output for the year 1910 of the value of \$676,520.05, and net profits of \$66,255.16. On December 31, 1910, The Conley Foil Company had tangible assets (excluding its securities of The Johnston Tin Foil and Metal Company) of \$1,215,321 and The Johnston Tin Foil and Metal Company had assets of the value of \$379,802.11. The Conley Foil Company has a surplus exceeding the value of the securities of the Johnston Tin Foil and Metal Company.

It is proposed that The Conley Foil Company cancel the bonds of The Johnston Tin Foil and Metal Company, held by it, to-wit: \$100,000 par value; and distribute to its stockholders its holdings of stock of The Johnston Tin Foil and Metal Company, to-wit: 3,000 shares, all of one class.

The American Tobacco Company, being a stockholder of The Conley Foil Company, will participate in this distribution, and will in turn distribute its dividends, as well as its stock in The Conley Foil Company, to its common stockholders as hereinafter set forth.

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(2.)

MacAndrews & Forbes Company.

MacAndrews & Forbes Company is a company having a common capital stock of \$3,000,000 at par, of which The American Tobacco Company owns \$2,112,900 at par, the balance being held by persons not defendants nor connected with defendants (except less than 3 1/3% of the common stock held by R. J. Reynolds Tobacco Co.), and \$3,758,300 at par of six per cent, non-voting preferred stock, of which The American Tobacco Company holds \$750,000 at par, the balance being held by persons not defendants nor connected with defendants. It is engaged in the production of

licorice paste, with two plants, one at Camden, New Jersey, and the other at Baltimore, Maryland. It had tangible assets, December 31, 1910, of the value of \$5,683,824.89 (including \$2,118,448.36, licorice root, with plants for its collection in foreign countries), and its sales for the year 1910 were of the value of \$4,427,023.44. MacAndrews & Forbes Company succeeded to the business MacAndrews & Forbes, a partnership, who were pioneers in this country in the production of licorice paste, and who had, for many years before any acquisitions of other business, and before they had any connection with the other defendants herein, more than fifty per cent. of all the licorice paste business of the United States.

It is proposed that a new corporation be organized called the J. S. Young Company, and that it shall acquire the Baltimore plant of MacAndrews & Forbes Company with the assets used therein and in connection therewith, of a total value of \$1,000,000, and the brands of licorice paste manufactured in said Baltimore plant; that it issue in payment therefor, with the goodwill connected therewith, \$1,000,000 at par of seven per cent. preferred non-voting stock, and \$1,000,000 at par of common stock; that MacAndrews & Forbes Company distribute the common stock of the J. S. Young Company as a dividend to its common stockholders, charging the amount thereof to its surplus account; that MacAndrews & Forbes Company offer to its preferred stockholders proportionately to exchange the seven per cent. preferred stock of the J. S. Young Company at par for their preferred stock of MacAndrews & Forbes Company; that so far as the preferred stock of MacAndrews & Forbes Company is thus exchanged, it be retired; that so far as this preferred stock of the J. S. Young Company is not forthwith thus exchanged, MacAndrews & Forbes Company be enjoined from using it to exercise, or otherwise exercising or attempting to exercise, influence or control over the J. S. Young Company; and with the further provision that on or before January 1, 1915, the whole of this preferred stock of the J. S. Young Company, not theretofore taken out of the treasury of MacAndrews & Forbes Company by exchange as aforesaid, be disposed of by MacAndrews & Forbes Company.

This would give to MacAndrews & Forbes Company a licorice business, including Spanish licorice and powdered goods, of the net selling value, based upon the year 1910, of \$2,514,184.64, of which \$2,214,127.51 arises from sales of one brand, to-wit, the old "Slip" brand. The J. S. Young Company, upon the basis of the business for the year 1910, would have an output of the net selling value of \$1,201,109.86.

The American Tobacco Company being a holder of the common stock of MacAndrews & Forbes Company, will participate in the distribution above provided and will in turn distribute its dividends, as well as its stock in MacAndrews & Forbes Company, to its common stockholders as hereinafter set forth.

American Snuff Company.

American Snuff Company is a manufacturer of snuff. It holds all of the stock of De Voe Snuff Company, to wit: \$50,000 at par; and one-half to wit, \$26,000 at par, of the stock of National Snuff Company. It owns no other interest in any company manufacturing or selling snuff.

It is proposed that there be organized two new snuff companies, one to be called the George W. Helme Company and the other Weyman-Bruton Company, and that American Snuff Company convey to these two companies respectively factories, with the brands manufactured in them, as follows: to the George W. Helme Company the factories at Helmetta, New Jersey, and Yorklyn, Delaware, except Factory No. 5; to Weyman-Bruton Company the factories at Chicago and Nashville, also all the stock of De Voe Snuff Company, and the one-half of the stock of National Snuff Company held by American Snuff Company. Based upon the business for the year 1910 and the assets at the end of the year, with proper provision for lead, materials, cash and book accounts for the two vendee companies, this would leave the three companies equipped as follows:

Manufacturing Tangible Assets.

American Snuff Company.....	\$5,075,969.72 (a)
George W. Helme Company.....	4,909,000.40
Weyman-Bruton Company.....	3,691,588.20

Sales Value During 1910.

American Snuff Company.....	\$5,520,422.15
George W. Helme Company.....	4,494,556.66
Weyman-Bruton Company.....	4,297,486.71

(a) See Note on page 10.

Net Income.

American Snuff Company.....	\$1,591,280.49 (a)
George W. Helme Company.....	1,259,280.98
Weyman-Bruton Company.....	1,293,759.39

(a) American Snuff Company holds securities not connected with the snuff business, to-wit: stock and bonds of The American Tobacco Company, preferred stock of American Cigar Company, aggregating in book value \$2,530,216.69, upon which American Snuff Company received in interest and dividends during the year 1910 \$176,680. It is proposed that American Snuff Company sell or otherwise dispose of these securities within three years, and that in the meantime they be held under an injunction as is provided in this paragraph with respect to securities of the George W. Helme Company and Weyman-Bruton Company to be temporarily held by it. It also owns all, to-wit: \$100,000 at par of the stock of Garrett Real Estate Co., which will be dissolved and liquidated.

Each of these vendee corporations will pay for the property and business conveyed to it by the issue of \$4,000,000 at par of seven per cent. voting preferred stock, and \$4,000,000 at par of common stock. American Snuff Company will thus receive the \$16,000,000 at par of these stocks into its treasury and will distribute to its common stockholders, as a dividend, the common stock aggregating \$8,000,000, to be charged to its surplus account. American Snuff Company will offer to its preferred stockholders proportionately to exchange these seven per cent. preferred stocks of the George W. Helme Company and the Weyman-Bruton Company for their pre-preferred stock of American Snuff Company at par. So much of the preferred stock of the American Snuff Company as is thus exchanged, will be retired. As to so much of the preferred stocks of the George W. Helme Company and the Weyman-Bruton Company as is not forthwith thus exchanged, American Snuff Company is to be enjoined from voting it, or using it to exercise, or other-

90 wise exercising, or attempting to exercise, influence or control over the George W. Helme Company or the Weyman-Bruton Company; and on or before January 1, 1915, all of these preferred stocks of the George W. Helme Company and the Weyman-Bruton Company not theretofore taken out of the treasury of American Snuff Company by exchange as aforesaid, to be disposed of by American Snuff Company.

The American Tobacco Company, being holder of the Common Stock of the American Snuff Company, will participate in the distribution above provided, and will, in turn, distribute its dividend, as well as its stock in American Snuff Company, including that to be acquired from P. Lorillard Company, to its common stockholders as hereinafter set forth.

(4.)

American Stogie Company.

American Stogie Company is a corporation whose only asset is all of the issued stock of Union-American Cigar Company, which latter company has cigar factories located at Pittsburgh, Allegheny, Lancaster and Newark. Its total production, based upon business for the year 1910, is only 1.58 per cent. of the entire production of cigars in the United States in volume, and, as these Petitioners believe, about the same percentage in value. American Stogie Company has \$976,000 at par of seven per cent. cumulative preferred stock, of which American Cigar Company owns \$40,000 at par, and none of the other defendants own any; it has \$10,879,000 at par of common stock of which American Cigar Company owns \$7,303,775 at par, and none of the other defendants own any. There are accumulated and unpaid dividends on the preferred stock to the amount of \$399,000 as of December 31, 1910.

91 It is proposed that American Stogie Company dissolve, with leave granted to the trustees in dissolution to either convert the assets into cash, and distribute them among the stock-

holders according to their rights, or to effect such reorganization as they may be able to effect, provided, that in either event there shall be a separation into at least two different ownerships of the factories and businesses now owned and operated by Union-American Cigar Company. If the dissolution is followed by a conversion of the assets of American Stogie Company into cash, American Cigar Company will take such cash as it may receive into its treasury; if it receives upon such dissolution securities of cigar manufacturing concerns, it will distribute such as a dividend to its common stockholders, to be charged to its surplus as hereinafter set forth.

(5.)

American Cigar Company.

American Cigar Company is a manufacturer of cigars. It has various factories of its own, and it owns all or a part of the stock of several companies engaged in the manufacture of cigars, all of which companies have been organized by it and which have received from it conveyances of part of its business, operating in this way as separate corporations for trade purposes. Among these companies is Federal Cigar Company.

American Cigar Company also owns a part of the stock of Havana Tobacco Company, which controls factories manufacturing cigars in Havana; and a part of the stock of Porto Rican-American Tobacco Company, engaged in the manufacture of cigars and cigarettes in Porto Rico; and half of the stock of Porto Rican Leaf Tobacco Company, engaged in growing tobacco in Porto Rico. American Cigar Company itself uses large quantities of Porto Rican grown leaf. Neither American Cigar Company nor any of
92 the companies in which it is interested, except Havana Tobacco Company and Porto Rican-American Tobacco Company, is engaged in the manufacture of cigars outside of the United States.

American Cigar Company, including with its production the production of companies of which it owns in whole or in part the stock, has, in volume, based on the business for the year 1910, 13.36 per cent. of the cigar business of the United States, and in value, as your Petitioners believe, substantially the same percentage. Havana Tobacco Company has, directly or indirectly, control of 24.06 per cent. of the total production of cigars in Cuba; 46.00 per cent. of the total exportation of cigars from Cuba to all countries of the world, including the United States; and 38.15 per cent. of the total exportation of cigars from Cuba to the United States.

It is proposed that American Cigar Company dispose of properties belonging to it, and thus disintegrate its business, as follows:

(a) That it sell to The American Tobacco Company for cash its stock, being all thereof, of Federal Cigar Company, at a fair price, to wit: \$3,965,616.05;

(b) That it sell to The American Tobacco Company, for cash, the stock it owns of Porto Rican-American Tobacco Company,

to wit: \$657,600 at par, at a fair price, to wit: \$350 per share, or \$2,301,600;

(c) That American Cigar Company dispose of any interest in American Stogie Company by receiving cash proceeds of its stock in dissolution thereof, if American Stogie Company upon dissolution converts its assets into cash; or by distributing as a dividend to its common stockholders out of its surplus the securities which it receives upon the dissolution of American Stogie Company, if it receives such.

All stocks thus to be acquired by The American Tobacco Company from American Cigar Company are to be disposed of by The American Tobacco Company as hereinafter set out.

E.

Distribution by The American Tobacco Company of Stocks Owned or to be Acquired by it.

(1.)

Immediate Distribution of Stocks.

The American Tobacco Company will buy from P. Lorillard Company, for cash at par, the 11,247 shares of the preferred stock of American Snuff Company held by P. Lorillard Company, and will receive, as the sole common stockholder of P. Lorillard Company, and by way of dividends 34,594 shares of the common stock of American Snuff Company held by P. Lorillard Company.

The American Tobacco Company will distribute among its common stockholders by way of dividends, and to be charged to its surplus, all of its securities of the following described classes, whether now owned by it or bought by it from American Cigar Company, as hereinbefore set forth, or bought by it from P. Lorillard Company, as just hereinbefore set forth, or received by it by way of dividends from any of the accessory companies defendant, as hereinbefore set forth, to wit:

- American Snuff Company common stock;
- American Snuff Company preferred stock;
- George W. Helme Company common stock;
- 94 Weyman-Bruton Company common stock;
- MacAndrews & Forbes Company common stock;
- J. S. Young Company common stock;
- The Conley Foil Company stock;
- The Johnston Tin Foil and Metal Company stock;
- R. J. Reynolds Tobacco Company stock;
- The American Tobacco Company, being a holder of the Common Corporation of United Cigar Stores stock;
- British-American Tobacco Company, Limited, ordinary shares;
- Porto Rican-American Tobacco Company stock;
- American Stogie Company stock (or what is received by way of dividends from American Cigar Company upon dissolution of American Stogie Company).

Including the amount to be paid to American Cigar Company and P. Lorillard Company for such of these securities as are to be acquired by The American Tobacco Company from them respectively and excluding those to be acquired by way of dividends, and which, therefore, do not affect the surplus of The American Tobacco Company, never having been set up on its books, these securities had a book value as of December 31, 1910, of \$35,011,865.03. The earning capacity of all the above securities thus to be distributed, based upon the results of the year 1910, is \$9,860,410.76, though not all thereof was distributed as dividends.

(2.)

Deferred Disposition of Stocks.

The American Tobacco Company will sell or otherwise dispose of, or distribute by way of dividends to its common stockholders out of its surplus at the time existing, before January 1, 1915, all of its holdings of the following securities:

95 British-American Tobacco Company, Limited, non-voting preference shares;

The Imperial Tobacco Company, (of Great Britain and Ireland), Limited, ordinary shares;

Corporation of United Cigars Stores bonds;

MacAndrews & Forbes Company non-voting preferred stock.

During the time these securities are left in the treasury of The American Tobacco Company, The American Tobacco Company to be enjoined from voting any thereof that under the terms thereof might be voted, or using any thereof to exercise, or otherwise exercising or attempting to exercise, influence or control over the said companies which issued the said securities respectively, and from gaining possession of any of the said companies by buying in at a foreclosure had under any of the securities, for any default with respect thereto or otherwise.

F.

Sale by The American Tobacco Company of Manufacturing Assets and Business to Companies to be Formed.

(1.)

There will be organized a new corporation called Liggett & Myers Tobacco Company, and a new corporation called P. Lorillard Company, and The American Tobacco Company will sell, assign and convey to these two companies factories, plants, brands and businesses, and capital stocks of tobacco manufacturing corporations, as follows:

96 To Liggett & Myers Tobacco Company.

Liggett & Myers Branch of The American Tobacco Company, engaged in the manufacture of plug tobacco at St. Louis, with the brands connected therewith;

Spaulding & Merrick, a company of which The American Tobacco Company owns, and has always owned, all the stock, engaged in Chicago in the manufacture of fine cut tobacco and smoking tobacco;

Allen & Ginter Branch of The American Tobacco Company, engaged in the manufacture of cigarettes at Richmond, Virginia, and the brands connected therewith (this does not include the brand "Sweet Caporal," made partly there and partly at New York);

Chicago Branch of The American Tobacco Company, a factory at Chicago engaged in the manufacture of smoking tobacco, with the brands connected therewith;

Catlin Branch of The American Tobacco Company, a factory at St. Louis engaged in the manufacture of smoking tobacco, with the brands connected therewith;

Nall & Williams Tobacco Company, a company of which The American Tobacco Company owns all the stock, engaged in the manufacture of plug and smoking tobacco at Louisville, Kentucky;

The John Bollman Company, a company engaged in the manufacture of cigarettes at San Francisco; of this corporation The American Tobacco Company owns ninety per cent. of the stock, which it is proposed to turn over to the Liggett & Myers Tobacco Company;

Pinkerton Tobacco Company, a corporation engaged in the manufacture of scrap tobacco (a kind of smoking tobacco) at Toledo, Ohio; of this corporation The American Tobacco Company owns 77½ per cent. of the stock, which it is proposed to turn over 97 to the Liggett & Myers Tobacco Company.

W. R. Irby Branch of the American Tobacco Company at New Orleans, engaged in the manufacture of cigarettes and smoking tobacco, the principal brands being "Home Run" and "King Bee";

The Duke-Durham Branch of The American Tobacco Company, engaged in the manufacture of cigarettes and smoking tobacco at Durham, N. C.; principal cigarette brands, "Piedmont" and "American Beauty"; principal smoking tobacco brand, "Duke's Mixture";

Two little cigar factories located, the one at Philadelphia, and the other at Baltimore, branches of The American Tobacco Company; principal brand, "Recruits."

To P. Lorillard Company.

All the rights of The American Tobacco Company in the present P. Lorillard Company, to wit: all the common stock and \$1,596,100 at par out of a total issue of \$2,000,000 of eight per cent. preferred stock; it is contemplated that as a part of these reorganizations the Lorillard Company, as at present constituted, be wound up and the new company be organized, taking over assets of the P. Lorillard Company;

S. Anargyros, a company engaged in the manufacture of cigarettes, in which The American Tobacco Company owns all the stock, and of which it has always owned all the stock;

Luhrman & Wilbern Tobacco Company, a company engaged in the manufacture of scrap tobacco (a kind of smoking tobacco), of which The American Tobacco Company owns, and has for many years owned, all the stock;

Philadelphia Branch B at Philadelphia, Wilmington 98 Branch B at Wilmington, Penn Street Branch at Brooklyn, Danville Branch B at Danville and Ellis Branch B at Baltimore, branches of The American Tobacco Company manufacturing little cigars, the principal brand being "Between the Acts";

Federal Cigar Company, a company all of whose stock is, and has always been owned by American Cigar Company, but which, as hereinbefore provided, is to be purchased for cash by The American Tobacco Company.

each of these conveyances to include proper and adequate storage houses, leaf tobacco and other materials and supplies, provision for book accounts, including in each case a ratable proportion of the cash held by The American Tobacco Company on December 31, 1910, so that each of the new corporations will be fully equipped for the conduct of the business of manufacturing and dealing in tobacco.

(2.)

Resources and Capitalization of Companies and Provisions for Exchanging and Retiring Securities of American Tobacco Company.

The American Tobacco Company has securities issued and outstanding as follows:

6% bonds	\$52,882,650
4% bonds (including outstanding 4% bonds of Consol. Tobacco Co.)	51,354,100
6% preferred stock	78,689,100
Common stock	40,242,400

The American Tobacco Company in October, 1904, immediately after the merger, had an outstanding issue of its own four 99 per cent. bonds and the Consolidated Tobacco Company four per cent. bonds which it assumed, amounting to \$78,689,100, but it has purchased on the market and retired \$27,335,000 at par of these four per cent. bonds, charging the amount thus expended to surplus. The six per cent. bonds and four per cent. bonds aforesaid are what are ordinarily known as debenture bonds, and are issued under a trust indenture which imposes a general charge on the property, income and earnings of the company in favor, first, of the six per cent. bonds, and, second, of the four per cent. bonds. The American Tobacco Company, after the reduction of the surplus through the acquisition by it of four per cent. bonds as aforesaid, had on December 31, 1910, a surplus of \$61,119,991.63,

which will be increased by the surplus earnings of the current year. The distribution of securities herein provided for to be forthwith made, would diminish the said surplus by \$35,011,865.03, the book value of securities to be so distributed. This book value is less than actual value, but in view of the fact that none of the assets of The American Tobacco Company are overvalued, the advance of the book value of the securities to be distributed as hereinbefore set forth to their actual value, would operate at the same time to increase the surplus of the Company, and so its surplus, after such distribution, would remain just the same as though the advance to actual value had not been made on the books of the Company.

The properties to be conveyed to the Liggett & Myers Tobacco Company and P. Lorillard Company, based upon conditions as of December 31, 1910, the last completed year, including in such conveyances the proper and proportionate storage houses, leaf tobacco, supplies and materials and cash, but without anything for value of brands, trademarks, formulæ, recipes and goodwill, but including stocks of companies, are of the value of \$30,607,261.96 to Liggett & Myers Tobacco Company, and \$28,091,748.86 to P. Lorillard Company. So far as these conditions shall be changed before the day of the conveyance, any deficiency is to be made good in cash, so that these two companies will have said amounts in tangible assets, as aforesaid, useful, and such as have been used, in the manufacture of the brands to be conveyed to them respectively, and cash. The American Tobacco Company will be left with tangible assets, including stocks of companies employed in manufacturing tobacco and its products, cash and bills and accounts receivable, of the value of \$53,408,498.94 as of December 31, 1910. The profits earned during the year 1910 on the brands and businesses to be conveyed by The American Tobacco Company to Liggett & Myers Tobacco Company amounted to \$7,468,172.02, and the profits on the brands and businesses to be conveyed by The American Tobacco Company to P. Lorillard Company amounted to \$5,264,729.38.

It is proposed that the value of the brands, trademarks, recipes, formulæ and goodwill to be sold to each of these companies, be determined by their earning capacity, based upon the results for the year 1910, so that each shall have an earning capacity of 11.02 per cent. per annum upon its total property, including both tangible property and brand value and goodwill. Upon this basis the consideration to be paid by the Liggett & Myers Tobacco Company will be \$30,607,261.96, value of tangible assets as above stated, and \$36,840,237.04, value of brands, trademarks, recipes, formulæ and goodwill, making a total of \$67,447,499; and the consideration to be paid by the P. Lorillard Company will be \$28,091,748.86, value of tangible assets as above stated, and \$19,460,752.14, value of brands, trademarks, recipes, formulæ and goodwill, making a total of \$47,552,501. The brands, trademarks, recipes, formulæ and goodwill of The American Tobacco Company, on December 31, 1910, were of the book value of \$101,324,-

964.07. The payments for brand value, etc., to The American Tobacco Company to be made by Liggett & Myers Tobacco Company and P. Lorillard Company as aforesaid, makes an aggregate of \$56,300,989.18, and would thus leave the book value of brands, trademarks, recipes, formulæ and goodwill retained by The American Tobacco Company at \$45,023,974.89, which added to the \$53,408,498.94 of tangible manufacturing assets to be retained by The American Tobacco Company, will make the total book value of manufacturing property to be retained by that Company \$98,432,473.83, upon which its earnings, based upon the results for the year 1910, would be \$11,369,809.82, or 11.55 per cent.

The Liggett & Myers Tobacco Company and the P. Lorillard Company would pay for these conveyances, therefore, the aggregate as aforesaid, to wit:

Liggett & Myers Tobacco Company	\$67,447,499
P. Lorillard Company	47,552,501
Aggregating	<u>\$115,000,000</u>

or each with its earnings on the business for the year 1910 so capitalized that said earnings represent 11.02 per cent. upon the capital.

Liggett & Myers Tobacco Company and P. Lorillard Company will issue securities to cover such capitalization in the aggregate as follows: To an amount equal to one-half of the outstanding six per cent. bonds of The American Tobacco Company, that is, \$26,441,325 at par in seven per cent. bonds; to an amount equal to one-half of the outstanding four per cent. bonds of The American Tobacco Company, that is, \$25,677,050 at par in five per cent. bonds; to an amount equal to one-third of the outstanding preferred stock of The American Tobacco Company, that is, \$26,229,700 at par, in seven per cent. cumulative voting preferred stock; which, upon liquidation of the Company, shall be paid at par with accrued unpaid dividends, before any amount shall be paid to common stock, with balance of assets distributable ratably to the common stock; and the balance of said \$115,000,000, that is, \$36,651,925 in common stock; the seven per cent. bonds and the five per cent. bonds to mature at the time fixed respectively for the maturity of the six per cent. bonds and the four per cent. bonds of The American Tobacco Company now outstanding, and to be issued under an indenture of substantially like tenor and terms with the present indenture of The American Tobacco Company under which its six per cent. bonds and four per cent. bonds were issued, the seven per cent. bonds to have priority in charge over the five per cent. bonds in the same way that the six per cent. bonds of The American Tobacco Company have priority of charge over the four per cent. bonds. Thus the capitalization of the Liggett & Myers Tobacco Company and P. Lorillard Company will be as follows:

	Liggett & Myers.	Lorillard.	Total.
7% bonds	\$15,507,837	\$10,933,488	\$26,441,325
5% bonds	15,059,589	10,617,461	25,677,050
7% preferred stock . .	15,383,719	10,845,981	26,229,700
Common stock	21,496,354	15,155,571	36,651,925
	<hr/> \$67,447,499	<hr/> \$47,552,501	<hr/> \$115,000,000

All of these securities of the Liggett & Myers Tobacco Company and the P. Lorillard Company to be turned over to The American Tobacco Company in payment of the purchase price for the factories, plants, brands and businesses and capital stocks of tobacco manufacturing corporations so to be conveyed to Liggett & Myers
 103 Tobacco Company and P. Lorillard Company respectively as hereinbefore set out.

These securities will be disposed of by The American Tobacco Company as follows:

The common stock will be offered for cash at par to the holders of the common stock of The American Tobacco Company in proportion to their holdings, and any not purchased by the person thus entitled thereto shall be sold to persons other than the individual defendants, to the end that such offer of common stock of the two new companies to the common stockholders of The American Tobacco Company shall not be used by the individual defendants to increase their ownership therein beyond the proportion of their holdings of the common stock of The American Tobacco Company.

To each holder of the six per cent. bonds of The American Tobacco Company, an offer shall be made to acquire his bonds for cancellation, and to give in exchange therefor, as to one-half thereof, new seven per cent. bonds of Liggett & Myers Tobacco Company and P. Lorillard Company at par, and in payment for the other half thereof, cash at the rate of \$120 and accrued interest for each \$100 face value of the bonds.

To each holder of the four per cent. bonds of The American Tobacco Company, an offer shall be made to acquire his bonds for cancellation, and to give in exchange therefor, as to one-half thereof, new five per cent. bonds of Liggett & Myers Tobacco Company and P. Lorillard Company at par, and, in payment for the other half thereof, cash at the rate of \$96 and accrued interest for each \$100 face value of the bonds.

To each holder of the preferred stock of The American Tobacco Company, an offer shall be made to acquire one-third of his stock for
 104 cancellation in exchange for an equal amount at par of Liggett & Myers Tobacco Company and P. Lorillard Company.

On account of the larger capitalization of the Liggett & Myers Tobacco Company as compared with the P. Lorillard Company, each class of the new securities will issue in the proportion of 58.65 per cent. thereof of Liggett & Myers Tobacco Company securities and 41.35 per cent. thereof of P. Lorillard Company securities. The stocks will be issued in shares of \$100, and coupon bonds in denominations of \$1,000, and registered bonds in larger denomina-

tions, and in denominations of \$100 and \$50, and in actual issue fractions will be eliminated.

The common stocks of the two Companies aforesaid are to be sold as above set out prior to March 1, 1912, with three years to be allowed for the retirement of the bonds and preferred stock of The American Tobacco Company, as above set out. Pending such, the said seven per cent. bonds, five per cent. bonds, and seven per cent. preferred stocks of the Liggett & Myers Tobacco Company and the P. Lorillard Company, together with an amount in cash, or in securities owned by The American Tobacco Company, at their book value, or partly in cash and partly in such securities, equal to the amounts required if all such sales and exchanges are made, will be deposited with the Guaranty Trust Company of New York, the trustee in the indenture under which the six per cent. bonds and the four per cent. bonds of The American Tobacco Company are issued, as the agency to effect the purchase and exchange. Such deposit will be made, not to secure, nor create a trust fund for the bonds, but for the purpose of sequestrating and taking from the control of The American Tobacco Company the securities and cash so deposited.

105 During the time of such deposit, the securities shall be in the name of, as well as in the custody of, said Trust Company, with any voting rights attaching thereto, but The American

Tobacco Company shall receive from the Trust Company all dividends and interest collected by it on account of such securities; and The American Tobacco Company shall have the right at any time and from time to time to sell, at such price as it may determine, and direct the delivery of any of such securities (except the securities of Liggett & Myers Tobacco Company and P. Lorillard Company), the consideration therefor to go into the hands of said Trust Company; or to withdraw any of such securities (except the securities of Liggett & Myers Tobacco Company and P. Lorillard Company) for the purpose of distribution among its common stockholders, if its surplus at the time permits; or to substitute other securities of like book value for the securities so deposited (except as to the securities of Liggett & Myers Tobacco Company and P. Lorillard Company); or to alter the relative proportion of cash and securities; it being the intent of this provision that there shall be sequestrated from the control of The American Tobacco Company, all the securities of the Liggett & Myers Tobacco Company and P. Lorillard Company, and an additional amount of cash or other securities equal, upon the purchase basis aforesaid, to the value of the four per cent. bonds and the six per cent. bonds of The American Tobacco Company at the time outstanding. At the end of the three years, if there are any of such securities of the Liggett & Myers Tobacco Company or P. Lorillard Company in the hands of such trust company undisposed of by such exchange as aforesaid, then The American Tobacco Company shall apply to this Court for an order as to the disposition thereof. Nothing contained in this provision, and nothing done under this provision, shall be construed as providing for the creation of, or

106 as creating, any lien or security on anything deposited with the trust company in favor of the six per cent. bonds or the

four per cent. bonds of The American Tobacco Company outstanding, or otherwise.

G.

Voting Rights to Preferred Stock.

By proper amendment of the certificate of incorporation of The American Tobacco Company, the preferred stock will be given full voting rights.

H.

Certain Incidental Provisions.

(1.)

P. Lorillard Company is a New Jersey company, with \$3,000,000 of common stock, all of which is owned by The American Tobacco Company, and \$2,000,000 of eight per cent. preferred stock. Of this preferred stock The American Tobacco Company holds \$1,596,100 at par, and there is held by others \$403,900 at par. Under the laws of New Jersey the present P. Lorillard Company may be dissolved by the holders of two-thirds of the outstanding stock, and upon such dissolution the preferred stock is entitled to be paid at par, the balance of the assets going to the common stock. In view of the fact, however, that the preferred stock of the present P. Lorillard Company is an eight per cent. preferred stock with abundant assets and earnings to make the principal and income secure, it is deemed fair to the holders of this outstanding \$403,900 of preferred stock that they be given an opportunity to take, at their option, 107 either cash at par, which they are legally entitled to, or the seven per cent. preferred stock of the proposed new P. Lorillard Company. As the preferred stock of the new P. Lorillard Company is to be seven per cent. preferred stock, the holders of said \$403,900 of said present preferred stock will be offered stock of the new company at the rate of \$114.25 for each share. It is therefore proposed that the new P. Lorillard Company provide for an additional amount of preferred stock sufficient to take care of \$403,900 preferred stock, on that basis, to wit: \$114.25 in new seven per cent. preferred stock for each \$100 of said stock, amounting to \$461,600 at par of preferred stock in addition to that set out hereinbefore. In view of the fact that in the statements hereinbefore made as to earnings of the P. Lorillard Company there is included only such part of the earnings of the present P. Lorillard Company as accrued to the proportion of its stock held by The American Tobacco Company, this increase of preferred stock would increase proportionately the profits of the P. Lorillard Company, and does not derange any of the figures hereinbefore given, or given in any of the Exhibits hereto and hereinafter referred to.

(2.)

American Snuff Company manufactures and sells a brand of snuff called "Garrett," which has a large sale in the Southern and Southwestern sections of the country. Originally this brand was manufactured at Yorklyn, Delaware, and in part packed in Philadelphia. Several years ago American Snuff Company determined, on account of freight rate conditions, to manufacture this brand at Clarksville, Tennessee, and to pack it at Memphis, Tennessee, and that the factories at Yorklyn, Delaware, should be given up
108 to the manufacture of other brands. It has yet, though, been unable to produce in Clarksville, Tennessee, goods similar to the goods heretofore and now made by it at Yorklyn, Delaware, although the experiment is still in progress, and with hope of success. Under the plan hereinbefore outlined, the brand "Garrett" snuff is allotted to American Snuff Company, and the factories other than one factory at Yorklyn, Delaware, are allotted to George W. Helme Company; your Petitioners pray that in the approval and adoption by this Court of this plan, American Snuff Company and George W. Helme Company be permitted to manufacture brands the one for the other, for a period not exceeding one year from March 1, 1912, each company paying to the other as consideration for such manufacture, the cost thereof plus five per cent; the necessity of paying five per cent. above cost is sufficient inducement to each company to manufacture its own goods as soon as American Snuff Company is able to manufacture "Garrett" snuff of the requisite character and kind in its Clarksville factory, thus leaving the Yorklyn factories, other than No. 5, for the manufacture by the George W. Helme Company of its own brands.

This Court, having heard the parties as directed by the Supreme Court of the United States, it is further ascertained and determined, and

Ordered, adjudged and decreed that said plan hereinabove set forth is a plan or method which, taken with the injunctive provisions hereinafter set forth, will dissolve the combination heretofore adjudged to be illegal in this cause, and will re-create out of the elements now
109 composing it a new condition which will be honestly in harmony with, and not repugnant to, the law, and without unnecessary injury to the public or the rights of private property.

It is further ordered, adjudged and decreed that the said plan as hereinabove set forth be, and it is hereby, approved by this Court, and the defendants herein are respectively directed to proceed forthwith to carry the same into effect.

The necessities of the situation in the judgment of this Court requiring the extension of the period for carrying into execution said plan to a further time not to exceed sixty days from December 30, 1911,

It is further ordered, adjudged and decreed that the defendants be allowed until February 28, 1912, to carry said plan into execution.

It is further ordered, adjudged and decreed that the defendants, their officers, directors, servants, agents and employees be, and they are hereby, severally enjoined and restrained as follows:

From continuing or carrying into further effect the combination adjudged illegal in this cause, and from entering into or forming any like combination or conspiracy, the effect of which is or will be to restrain commerce in tobacco or its products or in articles used in connection with the manufacture and trade in tobacco and its products, among the States or in the territories or with foreign nations, or to prolong the unlawful monopoly of such commerce obtained and possessed by the defendants, as adjudged herein
 110 in violation of the Act of Congress approved July 2, 1890, either:

1. By causing the conveyance of the factories, plants, brands or business of any of the fourteen corporations among which the properties and businesses now in the combination are to be distributed, to-wit: The American Tobacco Company, Liggett & Myers Tobacco Company, P. Lorillard Company, American Snuff Company, George W. Helme Company, Weyman-Burton Company, R. J. Reynolds Tobacco Company, British-American Tobacco Company, Limited, Porto Rican-American Tobacco Company, MacAndrews & Forbes Company, J. S. Young Company, The Conley Foil Company, The Johnston Tin Foil and Metal Company and United Cigar Stores Company, to any other of said corporations; by placing the stocks of any one or more of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any similar device; or

2. By making any express or implied agreement or arrangement together or one with another like those adjudged illegal in this cause, relative to the control or management of any of said fourteen corporations, or the price or terms of purchase, or of sale, of tobacco or any of its products, or the supplies or other products dealt with in connection with the tobacco business, or relative to the purchase, sale, transportation or manufacture of tobacco, or its products or supplies or other products dealt with as aforesaid, by any of the parties hereto, which will have a like effect in restraint of commerce among the states, in the territories and with foreign nations to that of the combination, the operation of which is enjoined in this cause; or

111 by making any agreement or arrangement of any kind with any other of such corporations under which trade or business is apportioned between such corporations, in respect either to customers or localities.

3. By any of said fourteen corporations retaining or employing the same clerical organization, or keeping the same office or offices, as any other of said corporations.

4. By any of said fourteen corporations retaining or holding capital stock in any other corporation any part of whose stock is also retained and held by any other of said corporations; provided, however, that this prohibition shall not apply to the holding by the Porto Rican-American Tobacco Company and American Cigar Company of stock in Porto Rican Leaf Tobacco Company, nor shall it

apply to the holding of stock of the National Snuff Company, Limited, by Weyman-Bruton Company and British-American Tobacco Company, Limited.

5. By any of said fourteen corporations doing business directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it; provided, however, that in case of a subsidiary corporation the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer, to bear also a statement indicating the fact of such control.

6. By any of said fourteen corporations refusing to sell to any jobber any brand of any tobacco product manufactured by it except upon condition that such jobber shall purchase from the vendor some other brand or product also manufactured and sold by it; provided, however, that this prohibition shall not be construed to apply to what are known as "combination orders" under which some
112 brand or product may be offered to a jobber or dealer at a reduced price on condition that he purchase a given quantity of some other brand or product.

It is further ordered, adjudged and decreed that during a period of five years from the date hereof, each of said fourteen corporations hereinbefore named, its officers, directors, agents, servants and employees, are hereby enjoined and restrained as follows:

1. None of the said fourteen corporations shall have any officer or director who is also an officer or director in any other of said corporations.

2. None of said fourteen corporations shall retain or employ the same agent or agents for the purchase in the United States of tobacco leaf or other raw material, or for the sale in the United States of tobacco or other products, as that of any other of said corporations.

3. None of said fourteen corporations shall directly or indirectly acquire any stock in any other of said corporations, or purchase or acquire any of the factories, plants, brands or business of any other of said corporations, or make loans or otherwise extend financial aid to any other of said corporations.

The provisions of this decree shall apply only to trade and commerce in or between the several states and territories and the District of Columbia, and trade and commerce between the United States and foreign nations.

It is further ordered, adjudged and decreed that British-American Tobacco Company, Limited, and The Imperial Tobacco Company
113 (of Great Britain and Ireland), Limited, shall not act as agent for each other, nor employ a common agent, for the purchase of leaf tobacco in the United States, and neither of said two companies shall unite with any of the said fourteen corporations among which the properties and businesses now in the combination are to be distributed, in the employment of a common agent for the purchase of tobacco leaf in the United States.

It is further ordered, adjudged and decreed that each of the twenty-nine individual defendants in this suit be enjoined and restrained from at any time within three years from the date of this

decree, acquiring, owning or holding, directly or indirectly, any stock, or any legal or equitable interest in any stock in any one of said fourteen corporations, except British-American Tobacco Company, Limited, in excess of the amount to which he will be entitled under the provisions of the plan when the same shall have been carried out as proposed as the present owner of the amount of stocks in said several companies shown by the affidavits of said several defendants filed herein on the 16th day of November, 1911; provided, however, that any of said defendants may, notwithstanding this prohibition, acquire from any other or others of said defendants, or in case of death from their estates, any of the stock held by such other defendant or defendants in any of said corporations.

It is further ordered, adjudged and decreed that the new companies whose organization is provided for in the plan hereinabove set forth, to-wit: Liggett & Myers Tobacco Company, P. Lorillard Company, George W. Helme Company; Weyman Bruton Company and J. S. Young Company, shall, after their formation and by appropriate proceeding, be made parties defendant to this cause and subject to the provisions of this decree and bound by the injunctions herein granted.

It is further ordered, adjudged and decreed that any party hereto may make application to the Court for such orders and directions as may be necessary or proper in relation to the carrying out of said plan, and the provisions of this decree.

It is further ordered, adjudged and decreed that the costs of this action shall be paid by the defendants other than R. P. Richardson, Jr., & Company, Incorporated, as to whom the suit has heretofore been dismissed, and the payment by the defendant The American Tobacco Company of the reasonable costs and counsel fees of the committees organized for the protection of the six per cent. bonds, four per cent. bonds and preferred stock of The American Tobacco Company, is hereby approved.

It is further ordered, adjudged and decreed that the defendants The American Tobacco Company, MacAndrews & Forbes Company, American Snuff Company, and each of them, and their and each of their officers, directors, servants, agents and employees, be severally enjoined and restrained as in said plan set forth, from voting stocks, exercising influence or control over other companies or gaining possession of other companies through the use of securities temporarily held by them respectively under said plan in each and every case in which it is provided in and by the said plan that any of said
115 three last named defendants shall be so enjoined.

It is further ordered, adjudged and decreed that such books and papers of the defendants The American Tobacco Company and S. Anargyros, or either of them, as relate to the suit of The Ludington Cigarette Machine Company vs. S. Anargyros and The American Tobacco Company, or the subject matter thereof or any part thereof, be preserved by the said defendants respectively until after the accounting, if any shall take place in said suit, and said suit be finally determined and ended.

It is further ordered, adjudged and decreed that jurisdiction of

this cause is retained by this Court for the purpose of making such other and further orders and decrees, if any, as may become necessary for carrying out the mandate of the Supreme Court.

November 16, 1911.

E. HENRY LACOMBE,
Circuit Judge.
ALFRED C. COXE,
Circuit Judge.
H. G. WARD,
Circuit Judge.
WALTER C. NOYES,
Circuit Judge.

116 All of which we have caused by these present- to be exemplified, and the Seal of the said District Court to be hereunto affixed.

Witness, the Honorable Charles M. Hough, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, in the Southern District of New York, this 11th day of December in the year of our Lord one thousand nine hundred and fourteen and of our Independence the one hundred and thirty-ninth.

[SEAL.] (Signed) ALEX. GILCHRIST, JR., *Clerk.*

Cancelled Internal Revenue stamp, 10¢. By "A. G. Jr." 12/11/14.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles M. Hough, one of the Judges of the District Court of the United States for the Southern District of New York, do hereby certify, that Alexander Gilchrist, Jr., whose name is subscribed to the preceding exemplification, is the Clerk of the said District Court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further testify that the Seal affixed to the said exemplification is the Seal of the said District Court, and that the attestation thereof is in due form of law.

Dated New York, Dec. 11th, 1914.

(Signed)

C. M. HOUGH,
United States District Judge.

Cancelled Internal Revenue stamp, 10¢. By "A. G. Jr." 12/11/14.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby certify, that Hon. Charles M. Hough, whose name is subscribed to the preceding certificate, is one of the Judges of the District Court

117 of the United States for the Southern District of New York,
duly appointed and sworn, and that the signature of said
Judge to said Certificate is genuine.

In testimony whereof, I have hereunto set my -and and affixed
the Seal of the said Court, at the City of New York in the Southern
District of New York, this 11th day of December, 1914.

[SEAL.] (Signed) ALEX. GILCHRIST, JR., Clerk.

Cancelled Internal Revenue stamp, 10¢. By "A. G. Jr."
12/11/14.

118 *Notice of Defendant to Take Testimony.*

Filed December 18th, 1914.

United States District Court, Eastern District of Louisiana, New
Orleans Division.

No. 14369.

THE PEOPLES TOBACCO COMPANY

vs.

THE AMERICAN TOBACCO COMPANY.

Messrs. Merrick, Lewis, Gensler and Schwarz, Attorneys for The
Peoples Tobacco Company:

Please take notice

That The American Tobacco Company, defendant herein, will take
the testimony of J. T. Wilcox, Percival S. Hill and J. M. W. Hicks,
each of whom resides in the City of New York, New York, and such
other witnesses as may be introduced, each of whom resides more
than one hundred miles from the place of trial herein and more
than one hundred miles from any place at which a District Court of
the United States for the Eastern District of Louisiana is appointed
to be held by law, for use on behalf of the said defendant on the
trial of the exceptions to the jurisdiction filed in the above cause,
the same to be taken before Charles D. Allen, a Notary Public duly
qualified to act under the laws of New York, who is not of counsel or
interested in this cause, at the office of Junius Parker, No. 111 Fifth
Avenue, New York on the fifth day of February, 1912, at ten A. M.
and thereafter from day to day as the taking of the depositions
may be adjourned, and said testimony will be taken in accordance
with the provisions of Sections 863, 864 and 865 of the Revised
Statutes of the United States and the amendments thereto.

Dated New Orleans, Louisiana, January 22, 1912.

(Signed)

DENEGRE & BLAIR,

Attorneys for Defendant.

119 Service of the above notice is hereby accepted, and the name
of the Notary in the notice is waived, the blank in the above

notice for the name to be filled later. All objections reserved to taking testimony at all.

(Signed)

MERRICK, LEWIS, GENSLER &
SCHWARZ.

120 *Depositions of Percival S. Hill and Josiah T. Wilcox, Taken Pursuant to Notice Before Charles S. Allen, Notary Public, in the City of New York, on Behalf of Defendant.*

Filed December 18th, 1914.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 14369.

PEOPLE'S TOBACCO COMPANY, LIMITED,

VS.

AMERICAN TOBACCO COMPANY.

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York:

Depositions of Percival Smith Hill and Josiah T. Wilcox, witnesses of lawful age, residing in said County and District, taken de bene esse on behalf of defendant, the American Tobacco Company, pursuant to the notice hereto attached, and to be read as a part hereof, before and by me, Charles S. Allen, a Notary Public in and for the County of New York, State of New York, at the office of Junius Parker, Esquire, No. 111 Fifth Avenue, City of New York, on the fifth day of February, 1912, at ten o'clock A. M., in the above entitled and numbered cause, now pending in the District Court of the United States for the Eastern District of Louisiana.

121 **Appearances:**

Edwin T. Merrick, Esq., for the Peoples Tobacco Company, Limited.

J. P. Blair, Esq., for the American Tobacco Company.

It is stipulated that the costs of taking said depositions are to be paid by the party taking the same, subject to being taxed as costs by the successful party to the action. The costs are to consist of the commissioner's or notary's fee, (\$10.), cost of stenographic work which shall be at the rate of 25 cents per folio for the original copy to be filed in Court, and court costs.

It is further stipulated that the depositions may be returned by the Notary to the court either by registered mail or by express.

It is further agreed by the parties that signatures of the witnesses, whose depositions are to be taken, are hereby waived.

Mr. Merrick: Before going into this testimony, counsel for plaintiff objects to the taking of the testimony, on the grounds that the questions involved and the exceptions, are matters of law entirely; that there has been no denial set up in the exceptions that the power of attorney given by the American Tobacco Company to the Secretary of State has ever been revoked.

122 PERCIVAL SMITH HILL, called as a witness on behalf of the defendant, The American Tobacco Company, having been first duly sworn by the Notary, to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. Blair:

Q. Where do you reside?

A. I reside at 119 East 36th Street, New York City.

Q. And your age?

A. Forty-nine.

Q. What is your official connection with The American Tobacco Company?

A. I am a vice-president of The American Tobacco Company.

Q. How long have you been connected with The American Tobacco Company?

A. Since 1898.

Q. In the last two or three years you have been in charge of any particular department?

A. Yes, I have had charge of the sale of the smoking and cigarette end of our business.

Q. Now, the suit in which your deposition is being taken was instituted in New Orleans on January 4th, 1912, and service of process was made on W. R. Irby on January 5th. Please state whether at either of those dates or subsequently The American Tobacco Company was engaged in any business as in New Orleans or in Louisiana?

A. It was not.

Q. Please state whether at either of those dates or subsequently the American Tobacco Company owned any property in New Orleans or Louisiana?

A. It did not.

Q. Was W. R. Irby, at either of those dates, an officer or
123 agent or employee of The American Tobacco Company?

Mr. Merrick: I object to the question on the ground that the power of attorney of The American Tobacco Company cannot be contradicted by the evidence of the witness.

A. He was not.

Q. Had he, at either of those dates, any authority from The American Tobacco Company to receive service of process for it?

Mr. Merrick: I object to that as a matter of opinion of the witness and I make the same objections previously made. It is un-

derstood that these objections are to apply to all the testimony of the witness and any other witnesses in this case.

Mr. Blair: Yes.

A. He had not, as his power to accept service had been revoked by me on December 1st, 1911.

Q. When did The American Tobacco Company cease to do business in Louisiana?

A. December 1st, 1911.

Q. How did it dispose of its business; that is to whom did it sell, if it sold it, and when?

A. It sold the business it had in New Orleans and Louisiana on December 1st to the Liggett & Myers Company, to carry out the decree of the Supreme Court in connection with its affairs.

Q. You mean the decree in the Government case?

A. Yes, sir.

Q. When did that vendee take possession of the business?

A. On the 1st of December, 1911.

124 Q. Was that an actual, bona fide sale?

A. Yes, sir.

Q. What became of the real estate, if any, which The American Tobacco Company owned in New Orleans or Louisiana?

Mr. Merrick: I object to that as irrelevant.

A. The real estate owned by The American Tobacco Company was sold on December 1st, to The American Cigar Company, in carrying out the arrangement by which the business was sold to Liggett & Myers. The American Cigar Company bought from The American Tobacco Company the real estate that it, The American Tobacco Company owned in New Orleans, and then, in turn, The American Cigar Company sold to Liggett & Myers Company the real estate that it, The American Cigar Company, owned in New Orleans.

Q. So, the result was The American Cigar Company has the real estate that The American Tobacco Company had, and the Liggett & Myers Company has the real estate that The American Cigar Company had?

A. Yes, sir.

Q. Do you know by what names the plants or factories owning such real estate are known in Louisiana?

A. Yes, sir. The property acquired by the American Cigar Company was known as the Irby Branch Factory, and the property sold by the American Cigar Company to Liggett & Myers was known as the Hershheim Factory.

Q. The sales to which you refer are the two sales, the deeds of conveyance of which are dated December 1st, 1911?

Mr. Merrick: I object to the testimony of the witness as not the best evidence.

A. Yes, sir.

Q. Will you look at this which purports to be a copy of
125 the conveyance from The American Tobacco Company to
The American Cigar Company, under private signature,
dated in the City of New York, December 1st, purporting to be
signed on behalf of The American Tobacco Company by Percival
S. Hill, Vice-President, and, on behalf of The American Cigar
Company, by R. E. Christie, a vice-president, and state whether
that is one of the deeds you referred to (exhibiting paper to wit-
ness).

A. (After examining.) It is.

Mr. Merrick: Is that the original deed?

Mr. Blair: That is a certified copy from the Conveyance Office in
New Orleans, to show the registration and so on.

Q. And look at this, which purports to be a certified copy, certified
by the Register of Conveyances of New Orleans, of the deed from
The American Cigar Company to the Liggett & Myers Company,
dated December 1st, 1911, and state whether that is the second deed
of conveyance to which you referred (exhibiting paper to witness).

A. (After examining.) It is.

Mr. Merrick: I object to the witness' testimony as not the best
evidence.

Mr. Blair: For the purpose of identification, the stenographer is
requested to mark the copies of deeds which have been referred to
by the witness, as Hill Exhibit 1 and Hill Exhibit 2, respectively.

The papers were marked "Hill Ex. 1, 2/5/12, C. S. C." and "Hill
Ex. 2, 2/5/12, C. S. A.", respectively.

Q. Was W. R. Irby ever an officer of The American To-
126 bacco Company?

A. He was a director but never an officer.

Q. When did he cease to be a Director?

A. Either November 30th or December 1st, 1911.

Q. When did he cease to be an agent or employee of the Com-
pany?

Mr. Merrick: I object to that on the ground that it is a leading
question and that he never has ceased.

A. On November 30th, 1911.

Q. How and in what manner did his employment cease?

A. Mr. Irby's duty in connection with The American Tobacco
Company was that of taking care of the business located in New
Orleans, and on the day that we sold that business to Liggett &
Myers, his employment by the Company ceased and he then be-
came an employee and director of the Liggett & Myers Tobacco Com-
pany.

Q. Was there ever any formal revocation of his authority to re-
ceive service of process?

Mr. Merrick: I object to any verbal evidence to prove that, on
the ground it is not the best evidence.

A. Yes, sir.

Q. What became of the act of revocation?

A. It was filed with the Secretary of State at New Orleans.

Q. With the Secretary of State, wherever his office was?

A. Yes, of Louisiana.

Q. Will you look at this document which I show you and state whether that is a copy, so far as you recollect it, of the act of revocation (handing paper to witness).

A. (After examining.) It is. A similar—

Mr. Blair: Wait a moment. The Stenographer is requested to mark the document referred to by the witness as Hill Exhibit 3.

The paper was marked "Hill Ex. 3, 2/5/12, C. S. A."

Mr. Blair: In connection with the testimony of the witness, counsel offers in evidence a certified copy, certified under the seal of the Secretary of State of Louisiana, of the act of revocation of the power of attorney granted to W. R. Irby, including the certificate of the Secretary of State, as to the filing thereof in his office on December 15th, 1911.

Mr. Merrick: Objected to on the ground that the power of attorney can have no effect as to suits brought against the defendant growing out of matters arising before the power of attorney was revoked.

Q. Did you, at the time you revoked the power of attorney of Mr. Irby, revoke the power of attorney of any other agents of The American Tobacco Company in any other states wherein it had ceased to do business?

Mr. Merrick: That is objected to as irrelevant.

A. Yes, sir, a similar revocation was made to our agents in the State of North Carolina and for the same reason; the agent there ceased his employment with The American Tobacco Company and went with one of the others.

Mr. Merrick: I object to that as a voluntary statement of the witness and an expression of opinion; the statement of his motive.

Mr. Blair: That is all.

Cross-examination by Mr. Merrick:

128 Q. Who are the present Directors of The American Tobacco Company; name them?

A. I will have to furnish you with those later.

Q. Who are the Directors of the Liggett & Myers Company?

A. I will furnish you with a list later.

Q. Who are the Directors of the American Cigar Company?

A. I will give you that later.

Q. Who are the Directors of P. Lorillard & Company?

A. I will furnish a list of those later.

Q. Do you know Mr. W. R. Irby?

A. I do.

Q. Does The American Tobacco Company ship any goods through New Orleans at all to foreign ports?

A. No, sir, not to my knowledge.

Q. You don't know?

A. I am quite sure they do not.

Q. Do you know whether they have any tobacco in bond; whether they ship any goods in bond?

A. They have not.

Q. Do you know when they ceased to have goods in bond for shipment?

A. They ceased to have goods in bond, if they had any at that time, when they ceased to do business on the 1st of December, 1911.

Q. Did their goods in bond cease to be in bond at that time?

A. Any goods that were in bond that were the property of The American Company at that time, were sold along with the rest of the business to the new Liggett & Myers Company.

Q. Do you know whether any formality is necessary to ship goods in bond to foreign ports?

A. No, I am not familiar with the details.

129 Q. Do you know whether The American Tobacco Company would have to have an agent at New Orleans, representing himself as an agent, to ship goods, under a regular power of attorney?

A. I don't know what the formalities are.

Q. Do you know who John Salisbury is?

A. John Salisbury?

Q. Yes.

A. No, sir, I do not.

Q. Do you know Mr. W. R. Irby?

A. Very well.

Q. If Mr. W. R. Irby or Mr. John Salisbury ship as agents of The American Tobacco Company, would you be prepared to say they were not the agents of The American Tobacco Company?

A. I don't know who Mr. John Salisbury is.

Q. You don't know whether he holds a power of attorney?

A. I do not.

Q. Will you show me your minutes where your Board of Directors ever authorized you to revoke the power of attorney of the corporation, Mr. Hill?

A. I can show you the minutes wherein the action of revoking the power of attorney was confirmed. There are no minutes indicating that it is my duty.

Q. When was your revocation of the power of attorney affirmed?

A. I presume at the first meeting after the 1st of December.

Q. When was that first meeting held—will you produce your minutes, so I can see?

A. Will you leave that date blank, because the minute book will show it?

Q. I will have to see the minute book, yes. It was in December, was it not?

A. No. I am quite sure it was not in December.

Q. You don't know anything about John Salisbury?

130 A. No, sir.

Q. Under the law or the Government rules, a power of attorney to sign for export has to be given to somebody. To whom was such power of attorney given in New Orleans?

A. Well, I presume to Mr. Irby, at the time.

Q. Do you know Mr. A. C. Durr or Dunn?

A. No, sir.

Mr. Merrick: I think that is all, except I want to see those minutes.

Redirect examination by Mr. Blair:

Q. When The American Tobacco Company ceased to do business, export and otherwise, in New Orleans, state whether or not, in your judgment, the power of attorney to any party, given in reference to such business, ceased.

Mr. Merrick: I object to that as a mere matter of opinion of the witness. That is a law question.

— I think it did cease.

Q. Would you consider it necessary to make any formal revocation of any such powers of attorney?

Mr. Merrick: Same objection.

A. No, sir.

Q. Under whose department and under whose authority was the business of The American Tobacco Company in New Orleans or Louisiana?

A. Under mine, primarily, through Mr. Irby.

Q. Did you consider that you had full authority to revoke agencies in reference to that business in Louisiana and New Orleans?

Mr. Merrick: Objected to as a matter of opinion and also as contradicted by the fact that the witness brought the matter before the Board of Directors afterwards.

131 A. Yes, sir.

Mr. Blair: I don't think the witness stated that he brought the matter before the Board of Directors but that he thinks his action was confirmed.

(At this point the witness left the room and, on his return, the deposition was continued.)

The Witness: I was mistaken about the revocation being passed upon by the Board. It was Mr. Irby's resignation which was spread on the minutes of the Board.

Mr. Merrick: When was that spread upon the minutes?

The Witness: I don't know the date; it is the first meeting after the 1st of December.

Mr. Blair: I will call Mr. Wilcox for that special purpose.

JOSIAH T. WILCOX, called as a witness on behalf of the defendant, The American Tobacco Company, having been first duly sworn by the Notary, to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. Blair:

Q. State your age and residence.

A. Forty-seven; Westfield, New Jersey.

Q. What is your official connection with The American Tobacco Company?

A. Secretary.

Q. How long have you been Secretary?

A. I will have to look it up. I think it is about four years, though.

132 Q. This suit in which your deposition is being taken is a suit instituted in New Orleans on January 4th, and service was made on one W. R. Irby on January 5th, 1912. Please state whether, at that time, Mr. Irby was an officer of The American Tobacco Company.

A. He was not.

Q. Had he ever been an officer?

A. Not unless you call a director an officer. He had been a director of The American Tobacco Company.

Q. Had he ever resigned as Director?

A. He had.

Q. At what time?

A. His resignation was dated the 29th of November; a telegram dated the 29th of November.

Q. Have you that telegram?

A. I have a copy of it here (producing a paper). The original is upstairs, if you want to see it.

Q. Is this copy which you produce a true copy of the original?

A. It is, yes.

Q. Please state what action was taken by the Company on receipt of this telegram?

Mr. Merrick: I object to that as leading.

A. The resignation of Mr. Irby was laid before the Board at the meeting on the last day of December and accepted. I have here a certified copy from the minutes of the action of the Board.

Mr. Blair: In connection with the testimony of the witness, counsel produces and asks to be filed with the depositions of the witness, copy of the telegram from W. R. Irby, dated New Orleans, Louisiana, November 29th, 1911, which the stenographer is requested to mark Wilcox Exhibit 1.

133 Mr. Merrick: That is objected to as not the best evidence, not because it is a copy of the telegram, but because the alleged telegram itself would be a copy and wouldn't be the best evidence.

Mr. Blair: I understand you do not require the production of the original telegram.

Mr. Merrick: Not unless you have the original telegram from the other end of the line.

The paper was marked "Wilcox Ex. 1, 2/5/12, C. S. A."

Mr. Blair: Counsel also offers in evidence and files with the deposition of the witness a certified extract from the minutes of the Board of Directors of The American Tobacco Company, held in the City of New York on December 1st, 1911, accepting said resignation, which the stenographer is requested to mark Wilcox Exhibit 2.

Mr. Merrick: That is objected to as not the best evidence.

The paper was marked "Wilcox Ex. 2, 2/5/12, C. S. A."

Q. Mr. Wilcox, so far as you know, was The American Tobacco Company, on January 4th, or January 5th, or at any time thereafter engaged in business in New Orleans or in Louisiana?

A. It was not.

Mr. Blair: The witness is yours.

Cross-examination by Mr. Merrick:

Q. When was the next meeting of the directors of The
134 American Tobacco Company held after the meeting on the 1st day of December?

A. I would have to refer to the minutes for that. I can let you know or I can telephone up for one of my people to bring that down.

Q. Could you get the minutes here?

A. I have got a rough draft of the minutes.

Q. Isn't it a fact that you met the next time in January?

A. I don't know. I can't answer that until I look at the minutes; but I don't think so. I don't think so long a time elapsed, because we were right busy during those days. I could give a definite answer if you will allow me to go up stairs and look at the extract of the minutes.

Q. Will you look through your minutes, from the 1st day of December to the 10th day of January, and let me know if at any time in that period an alleged revocation of a power of attorney to W. R. Irby, was approved by the Board of Directors; or the action of Mr. Percival S. Hill in revoking such power of attorney approved or confirmed?

A. Do you wish me to look at that now?

Q. Yes.

(At this point the witness left the room and, on his return, the deposition was continued.)

The Witness: I find that on December 6th we held a meeting, at which there was no quorum present, and no business transacted, necessarily. On December 13th a meeting which was adjourned to the 14th, and the meeting held on the 14th. We held a meeting on January 3rd and another on January 10th.

Q. Now, answer the other question, Mr. Wilcox; at those meetings isn't it a fact that the action of Percival S. Hill in sending to
135 the Secretary of the State of Louisiana the revocation of the power of attorney made out by him in the name of The American Tobacco Company was never approved?

A. It was not mentioned at all at any of those meetings. No reference whatever was made to it.

Q. Who are the directors of The American Tobacco Company?

A. Well, we have a Board at present of twenty-one directors, and I cannot name them offhand.

Q. Name some of them?

A. I can give you a list of them.

Q. I am going to get a list. I want you to name some of them that stand out in your mind?

A. Well, there is Mr. J. B. Duke, P. S. Hill, T. B. Yuille, R. K. Smith, who, by the way, has resigned, although his resignation has not been acted upon.

Q. Who is that, R. K. Smith?

A. Yes. Anthony N. Brady, Thomas F. Ryan, W. R. Harris.

Q. Duke, Smith, Harris, Hill and Ryan have been members of The American Tobacco Company di-ctorate for years, have they not?

A. Yes, they have.

Q. Who are the present directors that stand out in your mind of the Liggett & Myers Company?

A. Well, C. C. Dula, R. E. Dula, W. R. Irby and I think T. T. Anderson is a director, if I am not mistaken.

There is another case where I have got a list on my desk.

Q. Dula, Irby and Anderson are members of The American Tobacco Company's directors for years, were they not?

A. Mr. Anderson never was.

Q. Dula was?

A. Both Messrs. Dula were and Mr. Irby.

Q. Who are the prominent directors of P. Lorillard Company?

A. T. J. Maloney, R. K. Smith, W. B. Rhett, I think is one
136 of the directors. I was trying to recall the directors of other companies which I have been taking an interest in—I have a list upstairs.

Q. Is R. K. Smith also a director of the Liggett & Myers Company?

A. No.

Q. What directors of the Liggett & Myers Company?

A. No.

Q. What directors of the Liggett & Myers Company and The American Tobacco Company are the same?

A. Right now?

Q. Yes.

A. Well, we have in hand the resignation of Mr. C. C. Dula, who is also a director of this Company, and a director of the Liggett & Myers Tobacco Company. I think that is the last one.

Q. R. K. Smith is a director in both The American Tobacco Company and P. Lorillard Company?

A. We have his resignation in hand. In fact, I think of the directors who are directors in this Company and in other companies, all have resigned, and, with the exception of three or four, their resignations have been accepted.

Q. You don't know anything about the agents of The American

Tobacco Company in New Orleans, do you—do you know anything about the business of The American Tobacco Company in New Orleans?

A. Very little.

Q. Do you know anything about the shipping of goods to foreign ports, as to whether an agent of the Company has to represent the Company in order to have the goods shipped in bond by the United States Government?

137 A. That is very likely.

Q. Do you know Mr. John Salisbury?

A. I don't believe I have ever met him?

Q. Who is he agent for in New Orleans?

A. I don't know.

Q. Who is Mr. Irby agent for in shipping goods to foreign ports?

A. That I am not certain of; but if I am not mistaken, there is a power of attorney at the Custom House there which would authorize Mr. Irby to act for The American Tobacco Company if they wanted to ship through that port; that is to say, it has been on file down there in the Custom House for a great number of years, and if The American Tobacco Company wanted to ship goods from that port, he might be able to act for it; unless the authorities at the Custom House there decided that he could not act for The American Tobacco Company, not being in their employ.

Q. Is your reorganization complete under the recent decision of the Supreme Court?

Mr. Blair: Objected to as irrelevant.

A. We are given until the end of this month to finish that up. I would say practically it is a completed matter.

Q. Then why are you given until the end of the month?

A. That was the limit set by the Court. We cannot do everything at the last moment. We are given so many months to complete it.

Mr. Merrick: That is all.

Redirect examination by Mr. Blair:

Q. As far as the reorganization concerns business in Louisiana and New Orleans, is it complete?

A. Absolutely, I should say. We have turned over that entire business to the Liggett & Myers Company, having no more
138 interest in it after the 1st of December.

Recross-examination by Mr. Merrick:

Q. Is Mr. Cobb a director in any of these companies?

A. Which Mr. Cobb do you refer to?

Q. The tall young man.

A. That is H. W. Neither of the Messrs. Cobb is a director of these companies.

Mr. Merrick: That is all.

(The witness Percival S. Hill here entered room and handed certain papers to counsel.)

Mr. Blair: Mr. Percival S. Hill produces a list of the directors of The American Tobacco Company, as of the date of February 5th, 1912; of the Liggett & Myers Tobacco Company, of the P. Lorillard Company and of The American Cigar Company, and states that of the directors of The American Tobacco Company several have now tendered resignations but the same have not yet been acted upon. Their names are as follows: C. C. Dula, George A. Helme, T. J. Maloney and R. K. Smith. The following are the lists handed in by the witness:

Directors of The American Tobacco Company, Feb. 5, 1912:

George Arents.
 Anthony N. Brady.
 Paul Brown.
 James B. Duke.
 Caleb C. Dula.
 Howard M. Hanna.
 William R. Harris.
 George A. Helme.
 Percival S. Hill.
 Pierre Lorillard.
 Thomas J. Maloney.
 Rufus L. Patterson.
 Oliver H. Payne.
 Frank H. Ray.
 Thomas F. Ryan.
 Grant B. Schley.
 Robert A. C. Smith.
 Robert K. Smith.
 Charles N. Strotz.
 Thomas Yuille.
 C. S. Keene.

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Liggett & Myers Tobacco Company:

C. C. Dula.
 E. B. McDonald.
 R. B. Dula.
 W. R. Irby.
 R. D. Lewis.
 C. W. Toms.
 T. T. Anderson.
 Aug. Klein.
 G. W. Yates.
 W. W. Flowers.

P. Lorillard & Company:

Thomas J. Maloney.
 D. H. Ball.
 R. K. Smith.
 B. L. Belt.

- 140 G. W. Williams.
W. B. Rhett.
G. H. Hummel.
H. L. Kingsbury.
T. G. Smith.

American Cigar Company:

Directors.

Expires 1912:

F. H. Ray.
R. M. C. Glenn.
P. S. Hill.
Geo. Arents, Jr.
P. H. Gorman.

Expires 1913:

R. E. Christie.
F. E. Johnson.
G. G. Finch.
T. B. Yuille.
M. C. Patterson.

Expires 1914:

A. Schneider.
N. Weiss.
A. L. Sylvester.
Two Vacancies.

- 141 UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York:

I, Charles S. Allen, a Notary Public in and for the County and State aforesaid, duly commissioned and qualified do hereby certify that the above named Percival Smith Hill and Josiah T. Wilcox, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions were reduced to writing by myself, a stenographer, in pursuance of the notice and agreement hereto attached, and that the signatures of said witnesses were by consent of counsel expressly waived; that said depositions were taken at the time and place specified in the notice hereto attached, and that I am not counsel to any of the parties or otherwise interested in the event of this suit.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on this, the 8th day of February, 1912.

(Signed)

[SEAL.]

CHAS. S. ALLEN,

Notary Public, New York County.

142 STATE OF NEW YORK,
County of New York ss:

No. 15377.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify that Chas. S. Allen before whom the annexed was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said County, duly appointed and sworn, and authorized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 9 day of Feb. 1912.

(Signed)

WM. F. SCHNEIDER, *Clerk.*

143 HILL EX. 3. 2/3/12. C. S. A.

EXHIBIT MARKED HILL 3, ATTACHED TO DEPOSITION OF PERCIVAL S. HILL.

Filed February 12th, 1912.

STATE OF LOUISIANA:

I, the Undersigned Assistant Secretary of State, of the State of Louisiana, do hereby certify that the annexed and following two (2) pages contain a true and correct transcript of Revocation of power of attorney granted to Mr. W. R. Irby, of New Orleans, Louisiana, by the American Tobacco Company, of the State of New Jersey, which was filed in this office on December 15th, 1911, and recorded in book "Procurations," No. 5, Folio 182, as is shown by comparing the same with the original document.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this 12th day of January A. D. 1912.

(Signed)

[SEAL.]

EMILE J. O'BRIEN, JR.,
Assistant Secretary of State.

144 Know all men by these present, that The American Tobacco Company, a corporation organized and existing under the laws of the State of New Jersey, with its principal office at 110 First Street, Jersey City, and office at 111 Fifth Avenue, New York City, having disposed of all of its property in the State of Louisiana and ceased to do business in said State, has revoked authority of its resident agent in said State of Louisiana, and does hereby revoke the authority of said agent and cancel and annul his appointment as such agent.

In Testimony Whereof, said The American Tobacco Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereto affixed, this 1st day of December, 1911.

(Signed) THE AMERICAN TOBACCO COMPANY,
By PERCIVAL S. HILL,

[SEAL.]

Vice-President.

Attest:

(Signed)

J. K. GROYN,
Ass't Secretary.

STATE OF NEW YORK,

County of New York, ss:

I, R. J. Boylan, a Notary Public in and for the County and State aforesaid, do hereby certify that Percival S. Hill and J. K. Groyn, whose names are signed to the foregoing instrument, are personally known to me and known to me to be the Vice-President and Secretary respectively of The American Tobacco Company, the corporation mentioned in said instrument, and that each of said
145 persons personally appeared before me in my said County, and being duly sworn, on oath, did say that they are the Vice-President and Secretary respectively of said corporation; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; and they signed, sealed and executed the aforesaid instrument as the act and deed of said corporation.

Witness my hand and official seal this 1st day of December, 1911.

(Signed)

R. J. BOYLAN,

[SEAL.]

Notary Public, No. 200.

Kings County, N. Y. Register's Certificate No. 2025. Certificate filed in New York County, N. Y. No. 3040. Certificate filed in Nassau County, N. Y.

My commission expired March 30, 1913.

DEFENDANT'S EXHIBIT MARKED WILCOX 1, ATTACHED TO DEPOSITION OF JOSIAH T. WILCOX.

Filed December 18th, 1914.

146 (On Ordinary Telegram Blank of the Postal Telegraph-Cable Co.)

Telegram.

Copy.

13 21. Collect.

NEW ORLEANS, LA., Nov. 29.

Josiah T. Wilcox, Sec'y A. T. Co.:

I herewith tender my resignation as director of The American Tobacco Co. effective at once please acknowledge receipt and acceptance.

W. R. IRBY.

Marked in Ink "Wilcox Ex. 1, 2/5/12, C. S. A."

DEFENDANT'S EXHIBIT MARKED WILCOX "2," ATTACHED TO DEPOSITION OF JOSIAH T. WILCOX.

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Filed December 18th., 1914.

I, J. T. Wilcox, Secretary of The American Tobacco Company do hereby certify that, at a meeting of the Board of Directors of said company held at its office in the City of New York, on the first day of December, nineteen hundred and eleven, a quorum being present—

"The Secretary presented the resignation of Mr. W. R. Irby as a director of the Company, and on motion of Mr. Yuille, seconded by Mr. Patterson, it was—

"Resolved: That the resignation be accepted to take effect immediately."

Witness my hand and the seal of this Company at New York, N. Y., this third day of February nineteen hundred and twelve.

(Signed)

J. T. WILCOX,

[SEAL.]

Secretary.

(Marked in ink "Wilcox 2, 2/5/12, C. S. A.")

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HILL EXHIBIT 1, 2/5/12. C. S. A.

Copy of Act of Sale, American Tobacco Co. unto American Cigar Co.

Filed December 18, 1914.

Dec. 8th, 1912. Sale. American Tobacco Co. unto American Cigar Co.

Be it known that American Tobacco Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal office at 110 First Street, Jersey City, herein represented by Percival S. Hill one of its Vice-President-, for one dollar (\$1.00), and other valuable considerations in hand paid, receipt of which is hereby acknowledged, has bargained sold, assigned, transferred and set over, and does by these presents, grant, bargain, sell, assign, transfer and set over, with all legal warranties and with full subrogation and substitution, in and to all its rights and actions of warranty against all preceding vendors and warranters unto American Cigar Company, a New Jersey Corporation, herein appearing by R. E. Christie, First Vice President, hereto duly authorized here present, accepting and acknowledging due delivery and possession thereof all and singular the following described real estate, situated in the City of New Orleans and State of Louisiana, towit:

1. Two certain lots of ground, together with all the buildings and improvements thereon, situated in the 1st, District of this City, in the square bounded by New Levee, Gravier, Fulton and Poydras

Streets, designated by the Nos. 1 & 2 on a plan known as the plan of J. A. Beard, duly certified by H. Grant, Surveyor, deposited in the office of H. B. Cénas, late Notary in this City, according to which plan said lots measure as follows, to-wit: Lot No. 1, has 24' 6" 3" front on Levee Street, 22' 8" 6" front on Fulton Street, by a depth of 122' 7" 4" on the line dividing it from lot No. 2 and 123' 2" 6" in depth and front on Gravier Street. Lot No. 2 has 24' 6" 3" front on New Levee Street, 22' 8" 5" front on Fulton Street, by a depth of 122' 7" 4" on the line dividing it from lot No. 1, 149 and 121' 11" 2" on the line dividing it from lot No. 3 all American Measure.

2nd. Three certain lots of ground, together with all the buildings and improvements thereon, situated in the same district and square and designated by the Nos. 3, 4 and 5, on the above mentioned plan of J. A. Beard, and measuring according, as follows: Lot No. 3, has 24' 6" 3" front on New Levee Street, 22' 8" 5" front on Fulton Street, by a depth of 121' 11" 2" on the line dividing it from said above described lot No. 2, and 121' 7" 4" on the line dividing it from said lot No. 4. Lot No. 4, measures 24' 6" 3" on New Levee Street, 22' 8" 5" front on Fulton Street by a depth of 121' 7" 4" on the line dividing it from said lot No. 3, and 120' 9" 7" on the line dividing it from said lot No. 5, and said lot No. 5, measures 24' 6" 3" front on New Levee Street, 22' 8" 5" front on Fulton Street by 120' 9" 7" in depth on the line dividing it from said lot No. 4, and 120' 3" 3" on the line dividing it from lot No. 6 all American Measure. Being the same property acquired by the present vendor by purchase from W. R. Irby Cigar & Tobacco Company, Ltd., as per act of sale passed before Felix Joseph Puig, a Notary Public, in the City of New Orleans, State of Louisiana, on May 9th, 1908, and registered in the Conveyance Office of said City of New Orleans, in Book 217, folio 678.

3rd. Four certain lots of ground, together with the buildings and improvements thereon, and all the appurtenances thereunto belonging, situated in the 1st. District of the City of New Orleans, designated by the Nos. 8, 9, 10 and 11, in square No. 159, bounded by Magazine, Poeyfarre, Camp and Delord Streets, on a plan drawn by E. Gotheil, Architect, on March 26th, 1849, annexed to an act passed on May 14th, 1849, before A. Chiapelia, late a Notary in New Orleans, which lots measure as follows, to-wit Lot No. 8, 27' front on Magazine Street, by a depth of 120' between parallel 150 lines; Lot No. 9, forming the corner of Magazine and Poeyfarre Streets, 27' 8" 2" front on Magazine Street, by 120' in depth and front on Poeyfarre Street, the same depth on the line of said lot No. 8, and 27' 8" 2" in width in the rear, and said lots 10 and 11 adjoining lots 8 and 9 in the rear, have each, 25' front on Poeyfarre Street, by 124' 4" 1" in depth, American Measure.

4. A certain portion of ground, together with the appurtenances therunto belonging situated in the 1st District of the City of New Orleans, in the square bounded by Magazine, Poeyfarre, Camp and Delord Streets. Said portion of ground lies at a distance of 108' from Magazine Street, and of 54' 8" 2" from Poeyfarre Street and

measure- 80' in width along the rear line of lots 5, 6, and 7, as they figure on a sketch drawn by E. Pilie, on January 20th, 1899, annexed to an act passed before J. J. Woulfe, a Notary Public in and for the Parish of Orleans on February 20, 1899, by a depth of 12' between parallel lines, bounded on the side next Poeyfarre Street by lot No. 8, and on the side of Camp Street in part of lot No. 10, being the extreme rear of the original lots Nos. 5, 6, and 7. Also the boiler and smoke stack connected with said premises. Being the same property conveyed to said party of the first part by British-American Tobacco Company, Limited, a corporation, by deed dated May 17th, 1905, and registered in the Conveyance Office of said City of New Orleans, in Book 203, folio 551. Together with all and singular the buildings and improvements thereon, and the rights, easements and appurtenances thereto belonging or in anywise pertaining. To have and to hold the same unto the said Vendee its successors or assigns forever. Thus done and signed in the City of New York, State of New York, on the First day of December, 1911.

THE AMERICAN TOBACCO COMPANY,
PERCIVAL S. HILL, *Vice-President*.

Attest:

J. T. WILCOX, *Secretary*.

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AMERICAN CIGAR COMPANY,
By R. E. CHRISTIE, *First Vice-President*.

Attest:

(Signed) F. N. DE ROSSET,
Ass't Sec'y.

The above instrument was executed by all parties hereto.

GEORGE E. BOLIVAR.
HENRY RUPPERT.

STATE OF NEW YORK,
County of New York, ss:

On this First day of December 1911, before me, the undersigned authority, personally appeared Percival S. Hill and J. T. Wilcox, Secretary of the American Tobacco Company, a corporation; with all of whom I am personally acquainted, who being by me duly sworn do depose and say, that they are vice president and Secretary of said The American Tobacco Company, that they know the corporate seal of said Company, that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed thereto by order of the Board of Directors of said Company; that they signed the said instrument respectively as Vice President and Secretary of said Company by like authority, and they and each of them further declare that they are vice president and Secretary of said Company, respectively as aforesaid; that their signature- subscribed to said instrument are their genuine signatures thereto subscribed by them for the uses and purposes in said instrument as set forth. All of which is declared by said Percival S. Hill and J. T. Wilcox in my presence and that

of the said two witnesses, both males, full twenty-one years of age, residing in the City of New York, whose names are to said instrument and also hereto subscribed as such, together with the signatures of the said Percival S. Hill, and J. T. Wilcox and me, Notary, as aforesaid.

PERCIVAL S. HILL,
J. T. WILCOX.
R. J. BOYLAN,
Notary Public, No. 200.

Witness:

GEORGE E. BOLIVAR.
HENRY RUPPERT.

King's County, N. Y. Register's certificate No. 2028. Certificate filed in New York, N. Y. No. 3040, certificate filed in Nassau County, N. Y. My commission expires March 30th, 1913.

STATE OF NEW YORK,
County of New York, ss:

On this 1st day of December 1911, before me, the undersigned authority personally appeared R. E. Christie, First Vice President, and F. N. DeRosset, Assistant Secretary of American Cigar Company, a corporation, with all of whom I am personally acquainted, who being by me duly sworn do depose and say, that they are first vice president and Assistant Secretary of said American Cigar Company; that they know the corporate seal of said Company, that the seal affixed to the foregoing instrument is such corporate seal that it was affixed thereto by order of the Board of Directors of said Company; that they signed the said instrument respectively as first vice president and assistant secretary of said Company by like authority, and that they and each of them further declare that they are first vice president and assistant secretary of said Company; respectively as aforesaid; that their signatures subscribed to said instrument are their genuine signature- thereto subscribed by them for the uses and purposes in said instrument as set forth. All of which is declared by said R. E. Christie, and F. N. DeRosset in my presence and that of the said two witnesses, both males, full twenty-one years of age, residing in the City of New York, whose names are to said instrument also hereto subscribed as such, together with the signatures of the said R. E. Christie and F. N. DeRosset and me, Notary, as aforesaid.

R. N. CHRISTIE.
F. N. DE ROSSET.
R. J. BOYLAN,
Notary Public, No. 200.

Witnesses:

GEORGE E. BOLIVAR.
HENRY RUPPEL.

Kings County, N. Y. register's certificate No. 2025. Certificate filed in New York County, N. Y. No. 3040 certificate filed in Nassau County, N. Y. My commission expires March 30th, 1913.

No. 19731.

STATE OF NEW YORK,

County of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court of the said County, the same being a Court of Records, do hereby certify that R. J. Boylan, has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the
 154 County of Kings with his autograph, and was at the time of taking the proof or acknowledgement of the annexed instrument duly authorized to take the same, and further that I am well acquainted with the handwriting of such Notary, and believe the signature to the said certificate of proof or acknowledgement to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 5th, day of December, 1911.

WM. F. SCHNEIDER, *Clerk.*E. P. BRANDAO, *Register.*

Registered December 8th, 1911.

I, the undersigned Register of Conveyances in and for the Parish of Orleans, State of Louisiana, do hereby certify, that the above and foregoing is a true and correct copy of the inscription made in this office on December 8, 1911, in Book 251, Folio 127.

New Orleans, Jany. 27, 1912.

(Signed)

W. E. CONNOLLEY,
D'y Register of Conveyances.

(2.70) Conveyance Office. Fee Two 70/100 Dollars.

Received payment,

(Signed)

W. E. CONNOLEY.

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HILL Ex. 2, 2/5/12, C. S. A.

Copy of Act of Sale American Cigar Co. Unto Liggett & Meyers Tobacco Co.

Filed December 18th, 1914.

A/499.

December 21, 1911. Sale American Cigar Co. Unto Liggett & Meyers Tobacco Company.

Know all men by these presents, that, American Cigar Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal office in the State of New Jersey at 110 First Street, Jersey City, herein represented by Percival S. Hill, its president, for and in consideration of the sum of \$1.00, lawful money of the United States, and other good and valuable consideration to it in hand paid *paid* by Liggett & Meyers Tobacco Company, a corporation organized and existing under the laws of

the State of New Jersey at Jersey City, New Jersey, the receipt of which is hereby acknowledged, has bargained, sold, assigned, transferred and set over, and does by these presents grant bargain, sell, assign, transfer and set over unto the said Liggett & Meyers Tobacco Company with all legal warranties and with full subrogation and substitution in and to all its rights and actions of warranty against all preceding vendors and other warrantors, all and singular the following described real estate, to-wit:—

1st. Five certain lots of ground, together with all the rights, ways, privileges, servitudes and advantages thereunto appertaining and belonging situated in the First District of the City of New Orleans, in the square bounded by Magazine, Camp, Girod and Julia Streets, constituting the factory and office of the Hershheim Branch of said American Cigar Company, said lots being designated by the letters C, D, E, F and G, on a sketch annexed to an act of sale from Alfred Penn to

M. Schwartz & Company, passed before G. W. Christie, 156 Notary, on April 8th, 1872, which lots measure according to said sketch, as follows:—Lot "C" about 32' front on Magazine Street by 170'5" in depth, b/p. 1 Lot "D", about 32' front on Magazine St. by a depth of 110'5" B. P. L. Lot "E" forms one of the corner- of Julia and Magazine Streets and measures about 65' front on Magazine Street, by a depth and front on Julia Street of 110'5". Lot-F and G, each, 30' front on Julia Street, by a depth of 79' b. p. l.

2. A certain lot of ground, together with the buildings and improvements thereon, and all the appurtenances thereto belonging situated in the First District of the City of New Orleans, in the square bounded by Camp, Julia, Girod and Magazine Sts., designated by the No. 10 on square No. 162 on a sketch and certificate of survey made by Frank H. Waddill, Deputy City Surveyor, dated April 14, 1897, annexed to an act of sale from Marie Lukinevich to Isadore Hershheim, passed before Felix J. Dreyfous, a Notary Public in and for the Parish of Orleans, City of New Orleans, on the 21st, day of April 1897, According to which sketch and certificate of survey, said lot begins at a distance of 97' from the corner of Camp Street and Julia Street, and measures 31'10" front on Camp St., the same width in the rear, by a depth of 170'6" b. p. l.

3. A portion of ground measuring 13'11" in width by 35'10" in length and depth b. p. l. being a portion of a certain lot of ground, situated in the First District of this city, in the square bounded by Julia, Camp, Magazine and Girod Streets, measuring 25'4" front on Julia Street by a depth b. p. l. of 96'7". The buildings whereon bear the Municipal Numbers (Old Numbers), 535-537 Julia St., and which said portion of ground is more particularly described as follows, to-wit,—Starting on the line bounding said lot on the Magazine Street side thereof at a distance of 35'10" from the rear end of said lot, the said lot is bounded by a line drawn along the Magazine Street side of said lot to its rear extremity, thence turning towards Camp Street by a line drawn along the rear boundary of

157 said lot a distance of 13'11", thence at right angles to the rear boundary of said lot a distance of 35'10", thence towards Magazine Street by a line drawn parallel to the rear

boundary of said lot a distance of 13'11" to the rear point of starting, and which said portion of ground is designated by the letter "B" on a sketch or survey of said property annexed to a notarial act of sale S. Hershheim Bros., & Company, Limited to Miss Julia Hohn, passed before Andre W. Seguin, Notary Public, on the 23rd, day of April 1898.

The right of use of the lower story of the rear buildings on said lot of ground for a distance of 35'10" from the rear of said lot, so that said Leggett & Meyers Tobacco Company, will by reason of this transfer, own in fee simple or have the right of use the whole of said lot, including the lower story of the rear buildings on the said side, between the rear end of said lot and the line drawn parallel with said rear end at a distance of 35'10" therefrom. Said right of use being for a period of 25 years from April 23, 1898, free from all charge and expense, save only that the said Leggett & Meyers Tobacco Company, shall keep the portions of said rear buildings whereof the use is granted in good repair, and shall specially maintain the walls and foundations in sound and solid condition.

The right to run a drain or gutter from out of the dry kiln located on the property hereby conveyed in full ownership through the said lot into Julia Street gutter in the matter outlined on said sketch or survey annexed to said act before Andre W. Seguin, aforesaid, that is to say, in a right line to the rear wall of the front buildings on said property, thence at right angles to the Camp Street wall, thence along the said last named wall into Julia St., the right of access to the rear yard of said premises and lot hereinabove described being granted to said Leggett & Meyers Tobacco Company whenever requested, for the purpose of inspecting or repairing said dry kiln, the pipes or other fixtures thereof, or the said gutter or drain. The real estate hereinabove conveyed and all of said

rights of use drain and otherwise, having been acquired by
 158 said S. Hershheim Brothers Company, Limited in and by said act of sale from them to said Miss Julia Hohn, passed before said Andre W. Seguin as aforesaid, and the transfers aforesaid being made with full subrogation and substitution of said Leggett & Meyers Tobacco Company in and to all rights of every nature whatsoever acquired by said S. Hershheim Brothers Company, Limited, under and by said act of sale to Miss Julia Hohn, or under and by the same reserved to themselves S. Hershheim Brothers & Company, Limited transferred to the Havana-American Company and by the said Havana-American Company to the present vendor with full subrogation and substitution in and to all rights of every nature whatsoever acquired under and by virtue of an act of sale by said S. Hershheim Brothers & Company, Limited, made to the said Miss Julia Hohn or under and by the same reserved to themselves by said S. Hershheim Brothers & Company, Limited, and of all which rights with like subrogation and substitution are now transferred to the said Leggett & Meyers Tobacco Company and the said property as hereinabove described under the third paragraph of this agreement was acquired by said Havana-American Company from S. Hershheim Brothers & Company, Limited, under and by

virtue of said act of sale private signature of date November 27, 1899, and under and by virtue of another act under private signature made to correct certain mistakes in said agreement of November 27, 1899, of date April 16, 1901, duly acknowledged before Abraham Goldberg, a Notary Public, in and for the Parish of Orleans, State of Louisiana on the 17th day of April 1901, and registered in the Conveyance Office for the Parish of Orleans in Book No. 179 folio 317.

All of which property aforesaid is the same property purchased by the vendor from the Havana-American Company, a corporation organized under the laws of the State of New Jersey, which purchase was made by act under private signature duly acknowledged before Edwin F. Corey, a Commissioner for the State of Louisiana in New York on the 17th day of June 1901, and duly registered in the Conveyance Office of the Parish of Orleans in Book No. 182, folio 508, to which reference is made.

4. Two certain lots of ground, together with all the buildings and improvements thereon, and all the rights, ways, privileges and appurtenances thereunto belonging, or in any wise appertaining, situated in the 1st District of this City, in the square bounded by Julia, Camp, Girod, and Magazine Streets, designated by the Nos. 2 & 3, on a plan by C. A. De Armas, dated May 30th, 1867 and deposited in the office of C. V. Foulon, Notary, as plan No. 8. Said lots adjoin each other and measure in American Measure, according to said plan, as follows:—Lot No. 2, measures 30' 9" front on Julia Street by 96' 3" in depth, between parallel lines, and Lot No. 3, measures 31' 2" 3" front on Julia Street by 96' 3" in depth between parallel lines, being the same property which was acquired by vendor from James G. Kennedy and others, by act passed before John Clarence Davey, Jr., Notary Public in and for the Parish of Orleans on the 3rd day of September 1902, and duly registered in the Conveyance Office for the Parish of Orleans in Book No. 184, folio 631, to which reference is made. Together with the buildings and improvements thereon, and the rights, easements and appurtenances thereunto belonging or pertaining. To have and to hold all the above described property unto the Purchaser, its successors and assigns forever.

This sale is authorized by the vendor by resolution of its Board of Directors passed at a meeting held on the 24th day of November, 1911, of which said resolution a certified copy is annexed to and made part of this act. Thus done and signed at New York, this 1st day of December 1911.

AMERICAN CIGAR COMPANY,
By PERCIVAL S. HILL, *President*.

Witnesses,

GEO. E. BOLIVAR.
R. R. BOYD.

Attest:

F. N. DE ROSSET, *Asst Sec.*

160 STATE OF NEW YORK,
County of New York,
City of New York, ss:

On this 1st day of December 1911, before me, the undersigned authority, personally came and appeared Percival S. Hill, President of American Cigar Company and F. N. De Rosset, Assistant Secretary of said Company, with both of whom I am personally acquainted, who each being duly sworn say that they are respectively the President and Assistant Secretary of American Cigar Company, that they know the corporate seal of said Company, that the seal affixed to the foregoing instrument is said corporate seal; that it was affixed thereto by order of the Board of Directors of said Company, and that they signed said instrument respectively as President and Assistant Secretary of said Company by like authority and they and each of them did further declare that they are the officers of said Company respectively, as aforesaid, and that their signatures subscribed to said instrument are their genuine signatures thereunto subscribed by them for the uses and purposes therein set forth and said appearers did further depose and say that the execution of said instrument was authorized by the Board of Directors of said American Cigar Company as per the resolution referred to in the foregoing instrument, and of which a certified copy is annexed to said instrument, all of which is declared by said Percival S. Hill and F. N. De Rosset, in my presence and that of the two witnesses whose names are to the said instrument and also hereunto subscribed as such, together with me, R. J. Bayler, as aforesaid.

(Signed)

R. J. BAYLOR,
Notary Public, No. 200.

161 Kings County, New York, Register's Certificate No. 2025.
Certificate filed in New York County, N. Y. No. 8040 Certificate filed in Nassau County, N. Y.
My commission Expires March 30th, 1913.

Witnesses:

GEO. E. BOLIVAR.
R. R. BOYD.

STATE OF NEW YORK,
County of New York, ss:

No. 19865.

I, William F. Schneider, Clerk of the County and also Clerk of the Supreme Court, for the said County, the same being a Court of Records, do hereby certify that R. J. Baylor, has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Kings, with his autograph signature and was at the time of taking the proof or acknowledgement of the annexed instrument duly authorized to

take the same, and further, that I am well acquainted with the handwriting of said Notary, and believe the signature to the said certificate of proof or acknowledgement to be genuine.

In Testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 7th day of December 1911.

WM. F. SCHNEIDER, *Clerk.*

I, F. N. De Rossett, Assistant Secretary of American Cigar Company hereby certify that the foregoing extract from the minutes of the meeting of the Board of Directors of said Company, duly held on November 24, 1911, on mention of Mr. Christie, seconded by Mr. Hummel, and duly carried out.

Resolved, that the American Cigar Company, made the 162 sale provided for a draft of instrument herewith presented to the Board of Directors, bearing date December 1st, 1911, from American Cigar Company to the Leggett & Meyers Tobacco Company of all of the real estate of the Company situated in the City of New Orleans, and that the corporate seal of the Company be affixed to said instrument and that the President and Secretary or Assistant Secretary of American Cigar Company, sign said instrument.

F. N. DE ROSSET,
Assistant Secretary.

E. P. BRANDAO, *Register.*

Registered December 21st, 1911.

I, the Undersigned Register of Conveyances in and for the Parish of Orleans, State of Louisiana, do hereby certify, that the above and foregoing is a true and correct copy of the inscription made in this office on December 21, 1911, in Book 246, Folio 153. New Orleans, Jan'y 27, 1912.

(Signed)

W. E. CONNOLLEY,
Dep. Register of Conveyance.

3.45. Conveyance Office Fee Three 45/100 Dollars.

Received Payment

(Signed)

W. E. CONNOLLEY.

163

General Conveyance.

Filed December 18th, 1914.

This Intender, Made and entered into this First day of December, Nineteen hundred eleven, by and between The American Tobacco Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of New Jersey (hereinafter called the "Vendor") party of the first part, and Liggett & Myers Tobacco Company, a corporation duly created, organized and existing under and by virtue of the laws of said State of New

Jersey (hereinafter called the "Vendee") party of the second part, witnesseth:

That for and in consideration of the sum of One Dollar (\$1.00) and divers other good and valuable considerations to the Vendor through its duly appointed and authorized agents in hand paid by the Vendee, the receipt whereof is hereby fully acknowledged by the Vendor, the Vendor has given, granted, bargained and sold, and doth by these presents give, grant, bargain, sell, alien, assign, transfer, set over, deliver, confirm and convey unto the Vendee, and its successors and assigns absolutely and forever, the factories, plants, brands and businesses, and capital stocks of tobacco manufacturing corporations as follows:

The Liggett & Myers Branch of The American Tobacco Company, engaged in the manufacture of plug tobacco at St. Louis, with the brands connected therewith;

All the stock of Spaulding & Merrick, a company of which
164 The American Tobacco Company owns, and has always owned, all the stock, engaged in Chicago in the manufacture of fine cut tobacco and smoking tobacco;

Allen & Ginter Branch of The American Tobacco Company, engaged in the manufacture of cigarettes at Richmond, Virginia, and the brands connected therewith (this does not include the brand "Sweet Caporal," made partly there and partly at New York);

Chicago Branch of The American Tobacco Company, a factory at Chicago engaged in the manufacture of smoking tobacco, with the brands connected therewith;

Catlin Branch of The American Tobacco Company, a factory at St. Louis engaged in the manufacture of smoking tobacco, with the brands connected therewith;

All the stock of Nall & Williams Tobacco Company, a company of which The American Tobacco Company owns all the stock, engaged in the manufacture of plug and smoking tobacco at Louisville, Kentucky;

All the stock owned by The American Tobacco Company in The John Bollman Company, a company engaged in the manufacture of cigarettes at San Francisco (of this corporation The American Tobacco Company owns ninety per cent. of the stock);

All the stock owned by the American Tobacco Company in Pinkerton Tobacco Company, a corporation engaged in the manufacture of scrap tobacco (a kind of smoking tobacco) at Toledo, Ohio (of this corporation The American Tobacco Company owns
77½ per cent of the stock);

165 W. R. Irby Branch of The American Tobacco Company at New Orleans (the factory conveyed will be the factory now occupied by American Cigar Company), engaged in the manufacture of cigarettes and smoking tobacco, the principal brands being "Home Run" and "King Bee";

The Duke-Durham Branch of The American Tobacco Company, engaged in the manufacture of cigarettes and smoking tobacco at Durham, N. C.; principal cigarette brands, "Piedmont" and "American Beauty"; principal smoking tobacco brand, "Duke's Mixture";

Two little cigar factories located, the one at Philadelphia, and the other at Wilmington, Del., branches of The American Tobacco Company; principal brand, "Recruits";

Each of the foregoing properties is conveyed as a going concern;

With proper and adequate storage houses, leaf tobacco, and other materials and supplies, provision for book accounts, and a proportion of the cash held by The American Tobacco Company on December 31st, 1910, proportionate to the businesses and properties conveyed.

It is the purpose of this conveyance to convey to the said Liggett & Myers Tobacco Company in book value as carried on the books of The American Tobacco Company, tangible property useful in the tobacco business, including storage houses, leaf tobacco, supplies and materials and cash, and stocks of other companies of the value of Thirty Million, Six Hundred Seven Thousand, Two Hundred Sixty-one Dollars and Ninety-six Cents (\$30,607,261.96), and Vendor covenants and agrees to deliver the certificates of stock

endorsed to the Liggett & Myers Tobacco Company, the said 166 Vendee, or as it may direct, and to execute further deeds, conveyances, bills of sale and assignments as at any time or from time to time hereafter the Vendee may reasonably request as necessary to fully vest said title.

And Vendor, for the consideration aforesaid, covenants that it will warrant and defend said title against all claims and demands of every person whomsoever, it being understood that the Vendee takes this conveyance and all conveyances, transfers, assignments and deliveries subject to the unexecuted part or parts of all contracts that have application to the factories, plants, brands and businesses conveyed, so that they might be said to run with them, or not being carried out by the owner of the given factory, plant or business, to give the other party to the contract a claim for damages against the Vendor, and hereby indemnifies The American Tobacco Company against and claim on account thereof.

In witness whereof, the Vendor has caused its corporate name to be hereto subscribed, and its corporate seal to be hereto affixed and attended by officers duly authorized so to do.

THE AMERICAN TOBACCO COMPANY,
By PERCIVAL S. HILL, *Vice-President.*

Attest:

J. K. GWYNN, *Asst. Secretary.*

STATE OF NEW YORK,

County of New York, ss:

On this 1st day of December, 1911, before me personally
167 came Percival S. Hill, to me known, who being by me duly sworn, did depose and say that he resides in New York City, N. Y.; that he is the Vice-President of The American Tobacco Company, the corporation described in, and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so af-

fixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

R. J. BOYLAN,
Notary Public #200.

168

Testimony.

Filed Jan. 10, 1916, Nunc Pro Tunc as of Date Dec. 21, 1914.

United States District Court, Eastern District of Louisiana.

No. —.

PEOPLES TOBACCO COMPANY
vs.
AMERICAN TOBACCO COMPANY.

Proceedings Had in the Above-numbered and Entitled Cause Before Hon. Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, on the 19th Day of December, 1914, on the Exception to the Jurisdiction of the Court.

Appearances:

Mr. E. T. Merrick and Mr. R. J. Schwarz, for Plaintiff.
Mr. George Denegre and Mr. Junius Parker for Defendant.

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December 19, 1914.

IRVING L. STERN, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. Irving L. Stern.

Q. What is your business?

A. Cigar manufacturer.

Q. With what company are you connected?

A. The Havana-American Company.

Q. Is that company located in New Orleans?

A. Yes sir.

Q. And you are located in New Orleans?

A. Yes sir.

Mr. Parker You mean that the factory is located at New Orleans?

Mr. Schwarz: Yes.

Q. The technical name is the Havana-American Branch?

A. The New Orleans Branch of the Havana-American Company.

Q. Branch of what—

Mr. Parker: In order to save time, and as a result of a conver-

sation with Mr. Schwarz, I admit that the Havana-American Company is a New Jersey corporation and that it has a factory in New Orleans, and that the majority of its stock is owned by the American Cigar Company and that the majority of the stock of the American Cigar Company is owned by the American Tobacco Company, and that was true before and since the disintegration.

Q. What is the business of the Havana-American Branch?

170 A. The New Orleans branch, manufacturing of cigars.

Q. You manufacture and sell cigars in Louisiana and elsewhere?

A. Yes sir.

Q. Does the American Tobacco Company do any business through the Havana-American Company?

A. No sir.

Q. Will you name a few of the brands of cigars that are manufactured by the Havana-American Branch?

A. Florida Alliance, Idols, La Belle, Imperial and Tamillis; those are the brands in the main.

Q. How about Jackson Square?

A. No sir.

Q. Do you know whether the American Tobacco Company has done any advertising in the papers of New Orleans, local advertising for the sale of its tobacco?

A. I do not know.

Q. You, yourself, have not placed any such advertisements with the local papers on behalf of the American Tobacco Company?

A. For the American Tobacco Company?

Q. Yes?

A. I have not.

Q. Your company has an auditor, has it not?

A. It has.

Q. Will you name him?

A. Mr. Harding, located in New York.

Q. Is he sent down here to audit from New York?

A. Mr. Harding is not; his assistant is occasionally.

Q. Do you know whether he audits any other tobacco companies here, manufacturing or shipping?

A. In New Orleans or Louisiana?

Q. Yes?

A. He does not.

171 Q. Is there a company called the Havana Box Company, or the Havana-American Box Factory here?

A. No, I was going to mention that in connection with the manufacture of cigars, we manufacture cigar boxes for cigars.

Q. Have you a separate organization for that?

A. No, it is a part of our own organization.

Q. Part of the Havana-American Company?

A. Part of the New Orleans branch of the Havana-American Company.

Q. Are those boxes used for your own business exclusively?

A. They are used for our own company exclusively, but not for this branch exclusively.

Q. Do you sell anything to the Hershheim Branch?

A. No sir.

Q. Have you ever done that?

A. We have, not the Hershheim Branch—you mean the Hershheim Company?

Q. Yes. When did your company cease that?

A. We ceased that in July, 1914, June or July.

Mr. Schwarz: The Havana-American Branch has been located here right along, that was part of your admission, Mr. Parker, the New Orleans Branch was part of the Havana-American Company and has been located here right along before the disintegration?

Mr. Parker: Yes.

Cross-examination.

By Mr. Parker:

Q. Do I understand that up to July, 1914, you sold some boxes to the Hershheim Company?

A. Cigar boxes, yes sir.

Q. That is the company of which Mr. H. W. Cobb is manager?

172 A. Yes sir.

By Mr. Schwarz:

Q. Did your company do any business at all with, or for, or on behalf of the American Tobacco Company?

A. With or for or on behalf of the American Tobacco Company? We have done business with the American Tobacco Company.

Q. What sort of business?

A. We sold them plug tobacco.

Q. Do you still do that?

A. Occasionally.

Q. That has been a continuous line of business whenever there was a demand for it, right along?

A. We have only sold to them since I have been here, two sales by us.

Q. How about exports; do you export for their account?

A. No, we do not.

Q. Has your company ever done it?

A. I can only answer for the time I have been with the New Orleans Branch of the Havana-American Company.

Q. Who, in the New Orleans Branch of the Havana-American Company, could say, from the books of the company, whether it exported for the account of the American Tobacco Company prior to your time?

A. Mr. Black.

Q. He is in the city?

A. Yes sir.

ALEXIS C. DUMESTRE, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

173 A. Alexis C. Dumestre.

Q. You were connected with the Irby Branch of the American Tobacco Company, were you not?

A. Yes sir.

Q. For many years?

A. Yes sir.

Q. You are now connected with the Irby Branch of the Liggett and Myers Factory?

A. Yes sir.

Q. In the same factory in which you were previously connected with the Irby Branch of the American Tobacco Company?

A. Yes sir.

Q. Were you connected with the Black Horse Warehouse Tobacco Company?

A. I had some dealings with them.

Q. In what capacity?

A. Well, I attended to the supervision of the accounting part of it, and likewise, the revenue business.

Q. By revenue business, you mean in the Internal Revenue Department?

A. Yes sir, Form 59, as they call it, dealers leaf tobacco.

Q. What was the business of the Black Horse Warehouse Tobacco Company?

A. It is prizing.

Q. Will you kindly explain that?

A. It was to take the tobacco out of the hogshead, as received from Kentucky or Tennessee, assort it by lengths, and by dipping it in water and putting it under certain hydraulic pressure, and allowing it to remain in that position for about six months, change the color of the tobacco to black.

Q. It is a sort of manufacturing process, in other words?

A. Yes sir, but not considered manufactured by the Government.

174 Q. When did your connection with that company cease?

A. I don't recollect exactly.

Q. Well, approximately?

A. I cannot tell you that either.

The Court: The connection of the American Tobacco Company with the Black Horse Warehouse Tobacco Company was set out in the admission that was made yesterday, the British-American owned the stock and they owned the stock in the British American.

Mr. Schwarz: Yes, that was the only connection that was admitted, there was a stock interest.

Mr. Parker: Maybe I can help out by a further admission, from

what I can see. The Black Horse Warehouse Tobacco Company was owned by W. S. Matthews and Son before the disintegration, but after the disintegration, as far as I know, the W. S. Matthews and Son was a company in which the majority of stock was owned by the British-American Company, and the British American Company was an English corporation of which the majority of stock was owned by the American Tobacco Company, and the Irby Branch of the American Tobacco Company acted for the Black Horse or Matthews and Son, as it was, in fact, in exporting tobacco or otherwise. After the disintegration on December 1, 1911, the Irby Branch of the Liggett and Myers Tobacco Company, as I am informed and therefore admit, in the same way acted for this Black Horse—W. S. Matthews Company and, I think, continued to do so until July, 1912. I make that admission because I am so informed, though, of course, the activity of Liggett and Myers is not an activity with my client.

Mr. Schwarz: That admission does not go quite to the core.

175 The Court: What more do you want to show?

Mr. Schwarz: We want to show this, that Mr. Parker has made admission with regard to the change from the Irby Branch of the American Tobacco Company, and the Irby Branch of the Liggett and Myers Company, and, of course, it is right at the crossing that we are taking testimony about.

Mr. Parker: I don't mean to prejudice you by the admission.

The Court: What you want to show, of course, is that the American Tobacco Company was doing business in New Orleans on June 4, 1912?

Mr. Schwarz: Yes.

Q. Now I ask Mr. Dumestre, you said that you were acting for the Black Horse Warehouse Tobacco Company, making returns and doing what was necessary in the Internal Revenue Department?

A. Yes sir.

Q. And under whose authority were you acting?

A. I did the same for the Liggett and Myers Tobacco Company as I did for the American Tobacco Company.

Q. Who gave you the original authority?

A. There was really no authority in the Internal Revenue Department at all, as far as that is concerned.

Q. I mean how did you come to act in the Internal Revenue Department, what man, or set of men, ask- you to act in that capacity?

A. Mr. Irby.

Q. And you had been doing that for the American Tobacco Company?

A. Yes sir.

176 Q. Did you make any changes at any time in the Internal Revenue Department showing you were not any longer acting for the American Tobacco Company?

A. For the American Tobacco Company?

Q. Yes.

A. Yes sir.

Q. When did you register that change in the Internal Revenue Department?

A. I cannot tell you the date when it was; it was the early part of January when we filed powers of attorney.

Q. Early part of January, what year?

Mr. Parker: You can refresh your memory if you have any papers.

Mr. Schwarz: Have you any papers?

Witness: I have a copy of the power of attorney, but I do not know the exact date it was filed with the Collector of Internal Revenue.

Q. Well, let us see the copy?

A. Sure; it is in a bunch of papers outside. (Witness produces document referred to.)

Q. You have produced the power of attorney to which you refer; is that a power of attorney from the Liggett and Myers Tobacco Company?

A. Yes sir.

Q. What has that to do with the Black Horse Warehouse Tobacco Company?

A. Nothing at all.

Q. I was asking you about the Black Horse Warehouse Tobacco Company?

A. No, I understood you to say with the Liggett and Myers Tobacco Company.

Q. No, what I want to know is whether you ever registered
177 any change in the Internal Revenue Department as to the capacity in which you acted with respect to the business done for the Black Horse Warehouse Tobacco Company?

A. No sir, there was no change, because the Black Horse Warehouse Tobacco Company had nothing to do with the American Tobacco Company.

Mr. Merrick: I object to that part of it as a conclusion, I mean as far as Internal Revenue goes.

Q. Did you do any exporting for the American Tobacco Company, did the Black Horse Warehouse Tobacco Company do any exporting for the American Tobacco Company?

A. No sir.

Q. Any for the British-American?

A. Yes sir.

Q. For whom did they do exporting?

Q. Any for the British-American?

Q. Did they do any business with the Irby Branch of the American Tobacco Company, the Black Horse Warehouse Tobacco Company?

A. Yes sir.

Q. What was the nature of the business?

A. Now, from what time are you speaking, what date?

Q. Fix your own date.

A. Do you want information as to whether the Black Horse Warehouse Tobacco Company did any business with the Liggett and Myers Tobacco Company, or with the American Tobacco Company?

Q. I want, I say, to know whether they did any business with either, and what was the business?

A. They did business with the American Tobacco Company.

Q. What was the nature of it?

A. Selling this black tobacco they had reprimed, that is,
178 the Black Horse Warehouse Tobacco Company sold to the American Tobacco Company.

Q. Where did you get your raw leaf from, what company?

A. The American Tobacco Company, or the Liggett and Myers Company.

Q. You had charge, I believe of the auditing department, did you not?

A. Yes sir.

Q. How long was the liquidation of the affairs of the American Tobacco Company going on after the disintegration; how long did it take, I mean, to wind up their affairs?

A. It didn't take long to wind up their affairs here because they transferred the assets.

Q. Did you have any bank account for the American Tobacco Company here?

A. Yes sir.

Q. How long did that bank account continue here?

A. It stopped on the last day of November; that is, the 29th of November, 1911.

Q. With what bank was it?

A. The German-American.

Q. You say the account was closed out on that date?

A. Yes sir.

Q. Did you collect any outstanding open accounts for the American Tobacco Company after that date?

A. Yes sir—not for the American Tobacco Company because Liggett and Myers had bought out all the outstanding accounts.

Q. Did you continue to collect those outstanding accounts?

A. Yes sir.

Q. Did you deposit them in bank?

A. Yes sir.

Q. In a local bank?

179 A. Yes sir.

Q. Did you get payment for those accounts frequently by check?

A. Yes sir.

Q. To whom were they made payable?

A. They varied, some were made payable to W. R. Irby, some to W. R. Irby Branch, some of them to the W. R. Irby Branch of the American Tobacco Company, some to W. R. Irby Branch, Liggett and Myers; some of them to the American Tobacco Company, and others to the Liggett and Myers Tobacco Company.

By Mr. Parker:

Q. That is after December 1, 1911?

A. Yes sir.

By Mr. Schwarz:

Q. How were those made payable to the Irby Branch of the American Tobacco Company endorsed by you all?

A. We simply had a stamp to suit each one of them. If it was made payable to W. R. Irby, we had a rubber stamp W. R. Irby which we stamped on the back and then afterwards put the stamp Liggett and Myers Tobacco Company to deposit it.

Q. Did you open a new set of books?

A. Not cash books or ledgers or general books, we did not; that is, we used the same books. Of course, we set up a new inventory.

Q. Do these books show any change in date, showing the opening of the new books?

A. Yes sir.

Q. Who told you about the transfer of those open accounts to the Liggett and Myers Company?

A. Our auditing department.

Q. Who was that?

180 A. I believe Mr. Hall was the auditor at that time of the American Tobacco Company.

Q. What instructions did he give you on that subject?

A. To transfer them, that the Liggett and Myers Tobacco Company had acquired all the assets as of date November 29, 1911, from the American Tobacco Company, except an account we had there for railroad claims, and to make the proper entry, setting up these inventories as W. R. Irby Branch, Liggett and Myers Tobacco Company.

Q. Did you make any remittances of any of those outstanding accounts that you collected to the American Tobacco Company?

A. We did from time to time, but not any particular remittances.

Q. From time to time—

A. We made remittances to our home office.

By Mr. Parker:

Q. Of the American Tobacco Company?

A. No, of the Liggett and Myers Tobacco Company.

By Mr. Schwarz:

Q. What were these railroad claims?

A. Claims against the transportation companies for over-charges, or damages, or losses.

Q. Did you adjust any of those claims later on?

A. No sir.

Q. Do you know whether any of them were paid?

A. No sir, because we did not attend to the collecting of the claims at all.

Q. What other claims were excepted besides those railroad claims?

A. That is all, just the amount that was charged to that account, railroad claims.

Q. How about any notes, outstanding notes of the American Tobacco Company?

181 A. We had none.

Q. You did not have any bills receivable at all?

A. No sir, none at all.

Q. You say you stamped checks in different ways, who instructed the making of those stamps?

A. Those stamps we had used the whole time it was the American Tobacco Company.

Q. Well, were they made originally under the instructions of Mr. Irby?

A. No sir.

Q. Whose instructions?

A. The auditing department.

Q. Does the American Tobacco Company sell its goods here now?

A. I don't know anything about that; I believe they do, but I don't know anything about it.

Q. Have you any account of any kind on the books of the Liggett and Myers Tobacco Company for the American Tobacco Company?

A. No sir.

Q. Have you had for the past three years?

A. No sir.

Q. I mean since Jan'y, 1912?

A. I understand you, we have not.

Q. Has your company sold any goods itself on behalf of the American Tobacco Company, on commission or other basis?

A. No sir.

Q. You are sure about that?

A. Yes sir.

Q. Have you acted in any capacity since January, 1912, for the American Tobacco Company?

A. No sir.

Q. How about the paper Riz La Croix, do you know about that?

182 A. Yes sir.

Q. Did you sell any of that?

A. No sir.

Q. You never have sold any?

A. None; that was one of the brands which remained as the American Tobacco Company's property.

Q. You mean to say that you all never sold any of that paper?

A. Since December 1, 1911?

Q. Yes?

A. No sir, we have not.

Q. Why are you so sure about that?

A. Because I know it, because the Riz La Croix paper we had on hand at that time was the property of the American Tobacco Company, and after we sold it we just sent them a credit memorandum for it. That was during the American Tobacco Company's time,

before we received instructions that the Riz La Croix paper would be kept as a brand of the American Tobacco Company, and whatever stock we had on hand they would issue orders on us to deliver for their account.

Q. So, therefore, all they did was to issue orders on you to deliver the stock you had on hand and you delivered it for their account?

A. That is it.

Q. Did you have on hand any Red Cross Tobacco of the American Tobacco Company?

A. Yes sir.

Q. Did you do the same thing in regard to that?

A. The same thing, except the Red Cross tobacco was not the property of the American Tobacco Company after the first of December, it was the property of the P. Lorillard Company.

Mr. Schwarz: Will you make the admission about the P. 183 Lorillard Company, its connection with the American Tobacco Company?

The Court: The P. Lorillard Company was separated by the decree.

Mr. Parker: It maintained the same relations to the American Tobacco Company that the Liggett and Myers Tobacco Company maintained.

Mr. Schwarz: The American Tobacco Company was the chief owner of stock in the P. Lorillard Company, was it not, prior to the disintegration?

Mr. Parker: Yes, there was an old Lorillard Company prior to the disintegration but at the time of the disintegration there was organized a new Lorillard Company which issues of stock were conveyed just the same as the Liggett and Myers Tobacco Company.

The Court: The decree required the formation just like the Liggett and Myers Tobacco Company.

Q. What other brands, either cigarettes, tobacco, snuff or any thing else, did you all have on hand of the American Tobacco Company, or of any of its *subsident* companies?

A. That is all we had at that time.

Q. Red Cross?

A. And Riz La Croix paper.

Q. Who sent out the invoices for the accounts of the American Tobacco Company?

A. We did not render any from here at all. Do you mean for that cigarette paper?

Q. No, I am talking now of the outstanding accounts of the W. R. Irby Branch, who made out the bills for the Irby Branch after December 1, 1911?

184 A. There were no bills made, merely statements rendered up to December 1st; bills were made out on the American Tobacco Company's bill-heads but statements were rendered after that on the Liggett and Myers statements.

Q. Were any made out on the American Tobacco Company's billheads after the first of December?

A. No sir.

Q. Why are you sure about that?

A. Because I know, because we had all new stationery made.

Cross-examination.

By Mr. Parker:

Q. I understand that the W. R. Irby Branch of the American Tobacco Company for several years prior to December 1, 1911, manufactured goods here in New Orleans and billed them?

A. Yes sir.

Q. To its customers?

A. Yes sir.

Q. You were in charge of the auditing, were you not, for several years?

A. Yes sir.

Q. Did the W. R. Irby Branch collect its own accounts receivable?

A. During that time, yes.

Q. Up to the first of December, 1911?

A. Yes sir.

Q. Did they get checks payable in different ways, is that what I understand you to mean?

A. Yes sir.

Q. Some to W. R. Irby, some to W. R. Irby Branch, some to W. R. Irby Branch of the American Tobacco Company, and some to Liggett and Myers Tobacco Company?

185

A. Correct.

Q. When the business was sold to the Liggett and Myers Tobacco Company, what was sold, taking into account your balance sheet, what of your assets were sold to the Liggett and Myers Tobacco Company, according to your understanding?

A. All of our assets with the exception of the railroad claims.

Q. Where were those railroad claims, so far as collection was concerned; were they at the Irby Branch or at the New York office?

A. The New York office.

Q. So there was sold to the Liggett and Myers Tobacco Company the entire balance sheet of the W. R. Irby Branch save only these railroad claims which were in process of collection at the New York office?

A. Correct.

Q. When did the American Tobacco Company's bank account close here?

A. November 29, 1911.

Q. What became of that balance?

A. It was closed out by issuing a check for the balance which was shown in there, and then made payable to the Liggett and Myers Tobacco Company, and we started the bank account for the Liggett and Myers Tobacco Company with that check.

Q. When these checks would come in, after December 1, 1911, I assume that for the first few weeks at least they came in payable

in different ways, some of them to the American Tobacco Company, some of them to W. R. Irby, and some of them to the W. R. Irby Branch of the American Tobacco Company?

A. Yes sir.

Q. What did you do with them?

186 A. We handled them the same way as we did the checks when it was the American Tobacco Company; if it was W. R. Irby, we used a rubber stamp, W. R. Irby; if it was W. R. Irby Branch, we put the rubber stamp W. R. Irby Branch if it was W. R. Irby Branch of the American Tobacco Company, we put the rubber stamp W. R. Irby Branch of the American Tobacco Company on it. On each one of these checks, in addition, we put the Liggett and Myers Tobacco Company, because we deposited all of them to our credit.

Q. To whose credit were all the checks deposited which were received after December 1, 1911?

A. To the credit of Liggett and Myers Tobacco Company.

Q. In accounting in that way, in respect to these checks, whose instructions were you following?

A. Our auditing department.

Q. Who was the auditor you mentioned just now?

A. Mr. Hall, of the Liggett and Myers Tobacco Company.

Q. The auditor of the Liggett and Myers Tobacco Company?

A. Yes sir.

Q. For various matters in the Internal Revenue Department, and in exporting matters, you had on file in the Internal Revenue office, and other places powers of attorney of the American Tobacco Company?

A. Yes sir.

Q. When did you last use any of those powers of attorney, and when did your authority cease for their use?

A. It ceased when the business was transferred on the 29th of November, 1911.

Objection:

Mr. Schwarz: Objected to as not the best evidence.

The Court: I over-rule the objection.

187 Q. Before December 1, 1911, when you were acting as you say for the W. R. Irby Branch of the American Tobacco Company, in transacting some business for the Black Horse Warehouse Tobacco Company, under what sort of power were you acting, so far as your understanding goes, so far as the Internal Revenue matters were concerned; was the power of attorney issued by the Black Horse Warehouse Tobacco Company, or by the American Tobacco Company?

A. By the American Tobacco Company.

Q. After December 1, 1911, so far as your attention to the affairs that you have spoken of, of the Black Horse Warehouse Tobacco Company, under what powers of attorney, so far as your understanding goes, were you acting?

Objection:

Mr. Schwarz: We make objection, that the power of attorney is the best evidence.

Q. Did you have power of attorney from the Liggett and Myers Tobacco Company?

A. Yes sir.

Q. Refresh your memory by this paper which I hand you and tell me when that power of attorney was issued?

(Counsel hands paper to witness and witness examines same.)

A. The 8th day of December, 1911.

Q. What action, if any, have you taken under any power of attorney issued by the American Tobacco Company, since December 1, 1911?

A. None.

Q. As I understand, the particular business of the W. R. Irby Branch of the American Tobacco Company was the manufacturing of certain brands and their distribution?

A. Yes sir.

Q. And you handled your own bills and collected your own accounts?

A. Yes sir.

188 Q. During the time that the W. R. Irby Branch of the American Tobacco Company was a branch of the American Tobacco Company, do you know whether the American Tobacco Company sold from New York their products through Louisiana, Texas, etc.?

A. Yes sir.

Q. They had traveling men soliciting orders down here, did they not?

A. Yes sir.

Q. Generally speaking, where were those goods delivered from—I don't mean where they were delivered from, but were they delivered from the W. R. Irby Branch?

A. No sir.

Q. In other words, I understand up to December 1, 1911, the American Tobacco Company's products, some were sold here and manufactured here by and through the W. R. Irby Branch?

A. Yes sir.

Q. And some goods were sold in a way that you don't know anything about?

A. Correct.

Q. I understand further, from your examination, that there were two exceptions, were there not, to the extent that the American Tobacco Company delivered to the W. R. Irby Branch certain Riz la Croix paper and Red Cross Tobacco; is that true?

A. Yes sir.

Q. And the W. R. Irby Branch, before December 1, 1911, sold to some extent both of those products?

A. Yes sir.

Q. That business disconnected from the real business of the W. R. Irby Branch?

A. Yes sir.

189 Q. Now, on December 1, 1911, there remained in the hands of the W. R. Irby Branch some amount of Riz La Croix paper and some amount of Red Cross tobacco?

A. Correct.

Q. Now, was it your understanding that said amount of Riz La Croix cigarette paper and Red Cross Tobacco—was it your understanding that that was for the Liggett and Myers Tobacco Company at all?

A. No sir, it was not.

Q. Do you know how much of either there was on hand?

A. No sir.

Q. I don't want to restrict you to the exact amount?

A. I believe there was a good stock of both of them.

Q. Thereafter did you bill that paper out, or that Red Cross Tobacco?

A. No sir.

Q. What was it you did and when did you cease?

A. We made deliveries of the Riz La Croix paper on orders we received from the American Tobacco Company, and delivered the Red Cross Tobacco on orders we received from the Lorillard Company.

Q. Did you receive those orders in the sense of getting a letter from the American Tobacco Company to please deliver to Mr. John Smith certain Riz La Croix paper?

A. They had a regular form, deliver to So and So at such and such a price; in fact, we made some shipments outside the city.

Q. In other words either to a person or make a shipment?

A. Yes sir.

Q. Did you collect any of those bills?

A. No sir, we did not render any bills for them and did not collect for them either.

Q. Did that continue, or was it simply to the exhaustion
190 of what they had on hand?

A. It was just until the stock was exhausted, that was all.

Q. Do you know when that was?

A. I do not recollect right now, no sir.

Q. Do I understand that it was a month or two after December first?

A. Yes sir, it was all over, in a month; we didn't have any more stock then.

Q. And none was ever sent to you after that?

A. No sir, not a bit, not after that?

Q. It was simply turning over to a person Lorillard told you to turn over to the Red Cross Tobacco you had on hand, and to a person that the American Tobacco Company told you to turn over to the cigarette paper you had on hand?

A. Correct.

By Mr. Schwarz:

Q. Was there not something known as a drop shipment in the tobacco business?

A. Yes sir.

Q. Does that consist of making shipments of various brands?

A. Yes sir.

Q. Is it not a fact that in drop shipments the W. R. Irby Branch of the American Tobacco Company would frequently send a part of drop shipment brands that it itself did not manufacture?

A. I believe so.

Q. And that method is followed by the Liggett and Myers Tobacco Company to-day?

A. No, not now.

Q. It was followed, was it not?

A. I don't recall any brands we did not manufacture.

191 Q. No, I mean that the Irby Branch does not manufacture?

A. That might be manufactured by Liggett and Myers?

Q. Yes?

A. That is correct.

Q. What I want to try to find out is that the local branch distributes brands other than those which it does manufacture?

A. Correct.

By the Court:

Q. What do you mean by drop shipments?

A. Drop shipments, for instance, are goods shipped out in the country, well, say to Donaldsonville to Seymaurin for account of the jobber; we would make a shipment to a dealer for account of a jobber to save him the freight on it; it is billed to the dealer and shipped to the jobber's customer.

By Mr. Schwarz:

Q. Is it not true also that a manufacturer sends out its representatives to sell for account of a jobber?

A. Yes sir.

Q. In other words, the manufacturer would have a representative of his own take the order and the jobber would get the benefit of it?

A. Yes sir.

Q. And the goods would be shipped out from the manufacturer?

A. Yes sir.

Q. And charged to the jobber?

A. Yes sir.

Q. And the jobber would charge the retailer?

A. His customer, the retailer.

Q. You said Mr. Hall was auditor of the Liggett and Myers Tobacco Company?

192 A. Yes sir.

Q. Was he also the American Tobacco Company's auditor?

A. He was, yes sir, but not at the same time.

Q. Who was the auditor of the Black Horse Warehouse Tobacco Company?

A. There was no auditor at all.

Q. Was it audited at all?

A. I suppose it was, but that was the property of the W. S. Matthews Company.

Q. Who did the auditing?

A. We never kept any accounts at all with the Black Horse Warehouse Tobacco Company, that is, as far as exporting; all we did was the shipping of the goods and, the only record we had here was the——

Q. Isn't it a fact that the W. R. Irby Branch would audit that work?

A. Sure, we did the clerical work.

Q. Mr. Irby was manager for the Black Horse Warehouse Tobacco Company?

A. Yes sir.

Q. Didn't he resign as manager sometime in June or July, 1912?

A. Yes sir, I believe he did.

Q. Would you state how he came to resign?

A. Well, I don't know what led up to that, no sir, I cannot tell you.

Q. Can you state whether he resigned by telegram or letter?

The Court: Didn't he say himself that he resigned?

Mr. Schwarz: Yes sir.

Q. Did he resign by wire?

A. I don't know.

Q. Do you know whether he was in the city when he resigned?

A. I don't know whether he resigned at all.

193 Q. A moment ago you said——

A. Mr. Irby?

Q. Yes?

A. You asked me if he didn't quit doing business, I understood you to say, if he ceased to be manager; that is what I understood you to say.

Q. You said you believed he did; on what do you base that belief?

A. Because we didn't do any more business for the Black Horse Warehouse Tobacco Company; we closed it up at that time.

Q. After July, 1912?

A. Yes, sir.

The Court: What has the Black Horse Warehouse Tobacco Company to do with it, anyhow?

Mr. Schwarz: The American Tobacco Company—The disintegration had not taken place then and the American Tobacco Company was still—the Black Horse Warehouse Tobacco Company was still doing business on behalf of these other people.

The Court: The W. R. Irby Branch of the American Tobacco Company represented the Black Horse Warehouse Tobacco Company until the W. R. Irby Branch of the American Tobacco Com-

pany changed to the W. R. Irby Branch of the Liggett and Myers Tobacco Company?

Mr. Schwarz: That is just where the difference comes in; that is why we are going into the question of resignation.

Mr. Parker: Maybe I can save a little time by an admission?

Mr. Schwarz: Will you admit that Mr. Irby resigned from the Black Horse Warehouse Tobacco Company's managership
194 some time in July, 1912?

Mr. Parker: I don't know when it was; I know this, that the W. R. Irby Branch of the American Tobacco Company conducted no revenue business and no customs business for the Black Horse Warehouse Tobacco Company; I don't believe Matthews was manufacturing at all; they were not in the manufacturing business. That is my information, that the Liggett and Myers Tobacco Company continued that same situation after the disintegration, receiving a compensation from Matthews for conducting the business.

Q. The bills of the Black Horse Warehouse Tobacco Company, in whose name were they made out?

A. The Black Horse Warehouse Tobacco Company.

Q. Were they ever made out in the name of W. S. Matthews and Company?

A. No, sir.

Q. Ever made in the name of the British-American?

A. They might have been at the time the British-American owned it.

Q. Do you know whether there was any guarantee or agreement of any kind on the part of the American Tobacco Company to make good to the Liggett and Myers Tobacco Company any failure to collect these outstanding accounts?

A. I do not think so.

Q. Do you know whether there was any such agreement of any kind?

A. No, sir, I do not.

JAMES MAYOL, witness, sworn and examined on behalf
195 of plaintiff testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. James Mayol.

Q. Will you please state your business?

A. Cigarette, cigar and tobacco peddler.

Q. How long have you been in that business?

A. About seven years.

Q. Have you done business with the American Tobacco Company?

A. Yes, sir.

Q. How long have you been doing business with the American Tobacco Company

A. Four and a half to five years.

Q. That is from about 1910 to date?

A. I started in 1907.

Q. How long did you continue doing business with them?

A. Up until 1911.

Q. Have you bought any of the American Tobacco Company's goods since?

A. Of the American Tobacco Company?

Q. Yes?

A. Since 1911?

Q. Yes, their brands of cigars and cigarettes?

A. Direct from the firm?

Q. In any way?

A. Yes, sir.

Q. What I want to know is simply this, that you continued to purchase brands of the American Tobacco Company since 1911?

A. Always did.

Q. From whom have you purchased them since 1911?

196 A. From the biggest jobbers.

Q. Who are some of them?

A. U. Koen, H. Guenard, and the Crescent Company.

Q. Prior to 1911 from whom did you buy?

A. From the American Tobacco Company, the goods that they sold.

Q. In the city here? You mean the Irby Branch?

A. Not in the country, not in New York, but in the city here.

Q. I mean from whom did you buy, from the Irby Branch?

A. The goods I bought from the Irby Branch were such a-cigar-ettes; I handle Coupon, Virginia Extra, Picayunes, King Bee Tobacco, and all such stuff I bought direct from the American Tobacco Company.

Q. Did you buy anything through jobbers at all during that period?

A. Not in that line of cigarettes and tobacco, the brands I have mentioned.

Q. Any other brands of the American Tobacco Company, say Blackwell's Durham?

A. I bought through the biggest jobbers.

Q. In New Orleans?

A. Yes, sir.

Q. And the jobbers you mentioned were some of them?

A. Yes, sir.

Q. I want to show you two checks, dated December 2, 1911, and December 4, 1911; will you look at these two checks and state whether or not those are checks made out by you? (Counsel hands witness checks referred to and witness examines same.)

A. Yes, sir, those are my checks.

Offer.—Mr. Schwarz: We offer these two checks in evidence in

connection with the testimony of the witness, and mark them respectively Mayol 1 and Mayol 2.

197 Q. The stencil marks and stamps that appear on them, were they made by you, or is only the handwriting yours; were the stencil marks made by you?

A. No, sir.

No cross-examination.

C. A. DUVIC, Junior, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. C. A. Duvic, Jr.

The Court: What do you expect to prove by this witness?

Mr. Schwarz: We want to prove by this witness that the Nicholas Burke Company, with whom he is connected, acted as jobber for the American Tobacco Company's brands, acted as such jobber prior to and subsequent to December 1, 1911. Will counsel admit—

Mr. Parker: I will admit that the Nicholas Burke Company was a jobber in New Orleans; I will admit that he bought goods of the American Tobacco Company before December 1, 1911, and that he gave orders for goods and received them since December 1, 1911, and that he paid for them.

The Court: I will hear this witness and see how they do business with the jobbers.

A. Will you please state what your business is?

198 A. I am purchasing ledger bookkeeper for that company.

Q. How long have you been connected with the Nicholas Burke Company?

A. About 14 years.

Q. Is the Nicholas Burke Company a jobber, dealing in tobaccos and cigarettes?

A. Yes sir.

Q. Did the Nicholas Burke Company, prior to December 1, 1911, sell any brands of tobacco or cigarettes of the American Tobacco Company?

A. Yes sir, the reason why I know that they sold them is because they bought them, and I have the purchasing pad.

Q. You have the purchasing—

A. I have the purchasing record pad.

Q. Since December, 1911, has the Nicholas Burke Company always sold brands of cigarettes and tobacco manufactured by the American Tobacco Company?

A. Yes sir.

Q. Has the American Tobacco Company sent in orders taken by

representatives throughout Louisiana to the Nicholas Burke Company to be filled under what is known as the drop shipment?

A. We have had drop shipments, yes sir,—

Objection.—Mr. Parker: I object to that question in that form unless I am sure the witness understands it.

A. I understand it in this way, that we have had drop shipments; now, whether the American Tobacco Company's representatives took the orders and turned them over to the Nicholas Burke Company, or not, I cannot answer that, I am not positive about that.

Q. Do you know whether or not the American Tobacco Company's representatives took any orders which you all shipped on
199 these drop shipments?

A. I cannot tell you that?

Q. Who could tell that?

A. I suppose one of the members of the firm, Mr. Schwarbrick might be able to tell you that, because he gets all these slips himself; he gets the slips and then turns them over to be O. K'd.

Q. Have you bills in the possession of the Nicholas Burke Company that were rendered by the American Tobacco Company on their bill-heads after December 1, 1911?

A. Of New York, the American Tobacco Company?

Q. The W. R. Irby Branch, either New York or New Orleans?

A. I would not be posted on this, I would not know exactly what the bills would show, but I have the bills and of course I could refer to them, but I am pretty positive during November and December, 1911, that the bills were those of the American Tobacco Company.

Q. During December, 1911?

A. Yes sir, the W. R. Irby Branch of the American Tobacco Company.

Q. Bills sent to the Nicholas Burke Company?

A. Yes sir.

Objection.—Mr. Parker: I object to that if he — going to testify that the W. R. Irby Branch sent—I am willing to admit that he has bills after December 1, 1911, of the New York office from the American Tobacco Company; I am willing to admit that he has bills of 1911 of the W. R. Irby Branch of the American Tobacco Company.

The Court: Objection sustained.

Q. You may bring up, Mr. Duvie, to us and hand to me, if you will, after you leave here, as quickly as you can, those bills
200 that you speak of. Now, did the Nicholas Burke Company make out any checks in favor of the W. R. Irby Branch of the American Tobacco Company after December 1, 1911?

A. I will have to refer to them, I will have to refresh my memory, because I have not seen the checks.

Q. Will you look, when you look for those bills, and if you have any such checks likewise produce them—after December 1, 1911?

A. Yes sir.

Q. During December, 1911?

A. Checks in favor of the W. R. Irby Branch of the American Tobacco Company?

Q. Yes.

A. But suppose it just simply reads W. R. Irby Branch?

Q. I have seen them; that is all right. Will you state, please, some of the brands of tobacco or cigarettes that you sell, manufactured through the Irby Branch, either the W. R. Irby Branch, or the American Tobacco Company?

A. What brands?

Q. What brands you handled?

A. Home Run tobacco and cigarettes, and King Bee and Coupon Cigarettes, Star Brand tobacco.

Q. Red Cross?

A. Red Cross tobacco.

Q. Horse Shoe?

A. I am not very familiar with the brands, like I told you; I just handled the bill pad and the discounts, and the payment of the bills, draw out the checks.

Mr. Schwarz: How about this drop shipment matter, do you want us to call Mr. Swarbrick, or will you admit that the Nicholas Burke Company was one of the jobbers that handled some of these drop shipments?

201 Mr. Parker: If it is to save time and not to be encumbered by more testimony, I will admit that the Nicholas Burke Company, and other jobbers, received from their own salesmen, and received, also, from what you call retail salesmen, employed by the American Tobacco Company, offers by retailers to buy from the Nicholas Burke Company, certain tobaccos, and if the Nicholas Burke Company saw fit to accept those orders and gave an order for those goods to the American Tobacco Company at its New York office, if that order was accepted, then they made drop shipments to retailers for the account of the Nicholas Burke Company, the amount being charged to the Nicholas Burke Company and the American Tobacco Company looking to the Nicholas Burke Company for the payment of the bill. That is the way I understand it.

Mr. Schwarz: Will you add to that, that prior to the shipment of the orders taken by such representatives of the American Tobacco Company, the orders were approved by the Nicholas Burke Company, or other jobber?

Mr. Parker: It was an order of the Nicholas Burke Company.

The Court: He did business in the usual way?

Mr. Parker: The American Tobacco Company sent out drummers to work the retail trade and they turned the orders over to the jobbers, such as the Nicholas Burke Company; I understand the process thoroughly.

Mr. Schwarz: That covers that phase of the case; all we need are the bills.

Cross-examination.

By Mr. Parker:

Q. The Nicholas Burke Company is a merchant here in
202 New Orleans?

A. Wholesale grocer and jobber.

Q. He buys a good many goods manufactured in New Orleans and
manufactured outside?

A. Yes sir.

Q. And having those goods he sells them to retailers?

A. Yes sir.

Q. And his profit is the difference between what he gives and
what he receives?

A. Yes sir, the difference between the cost price and the selling
price.

Mr. Schwarz: We have two witnesses, but I think we can save
time; Mr. Thos. J. Tully, formerly of the Henry Lochte Company,
a jobber in New Orleans, doing a jobbing business in tobacco and
cigarettes, and John Grundman, Jr., of the Albert Mackie Company,
Limited, likewise a jobber in the city, and counsel will admit that
these gentlemen will testify to the same things that Mr. Duvic has
testified to.

Mr. Denegre: State what you think they will testify to?

Mr. Schwarz: It is admitted that Mr. Thos. J. Tully, formerly
with the Henry Lochte Company, a jobber, doing business in New
Orleans, in tobacco and cigarettes, if called, would testify that prior
to December 1911, and subsequent to December, 1911, the Henry
Lochte Company sold brands of the American Tobacco Company,
some manufactured by the W. R. Irby Branch, and some manufac-
tured by other branches, and drop shipments were made under orders
and under conditions similar to those made in the admission

203 of counsel previously respecting the business of the Nicholas
Burke Company; the admission is not intended to indicate
that the W. R. Irby Branch, after December, 1911, manufactured
any brands for the American Tobacco Company.

Admission.—It is admitted that the American Tobacco Company
sent salesmen into the city of New Orleans to solicit the retail trade,
that these orders were turned over to various wholesalers; if ac-
cepted by the wholesalers the goods were then shipped direct to
the retailer by the American Tobacco Company upon the written
order of the wholesaler for account of the wholesaler; that that was
prior to December 1, 1911, and since, up to the present time, it is
admitted that the orders thus taken by the representatives of the
American Tobacco Company were addressed to the jobber and sent
in to the jobber.

Mr. Schwarz: We will admit that on January 2, 1912, that a bill
was rendered by the W. R. Irby Branch of the American Tobacco
Company to the Henry Lochte Company.

Mr. Parker: If you will introduce the whole record, yes, I will
admit it.

Mr. Schwarz: It is not a record, we are offering the bill.

Mr. Parker: The plaintiff comes here with a bunch of bills which do not go back of January 2, 1912, but they are bills rendered from January 2, 1912 to January 15, 1912, there are, roughly, about 14 of them; 12 of them have a stamp on them, Liggett and Myers Tobacco Company, and two of them are without that stamp. If he will introduce all bills rendered from December 1, 1911, from the Irby Branch, or Liggett and Myers, then we will admit it.

Mr. Schwarz: You can introduce them.

204 Mr. Parker: I was just trying to save time; it is perfectly obvious how the matter arose.

The Court: I guess the bills are of the same date, only one is stamped and one is not stamped; what do you want to introduce, just two?

Mr. Schwarz: Yes sir, we want to introduce the two bills; we have no objection to these gentlemen introducing all the bills they want.

Mr. Parker: If he will introduce the bills in question at this time, then we will admit them.

Mr. Schwarz: All right, we will introduce them all; we offer, dated January 2, 1912, on the bill-heads of the W. R. Irby Branch of the American Tobacco Company—running from January 2, 1912, to January 15, 1912, and mark them Tully, 18 bills, all of which bear across the face the stamp of Liggett and Myers Tobacco Company, with the exception of two, which are dated January 2, 1912.

Mr. Parker: Our admission is that those bills were rendered by the Liggett and Myers Tobacco Company and that they do not include all the bills rendered after December 1, 1911, but only certain ones that counsel for plaintiff has presented.

The Court: They are susceptible of explanation, I suppose, by the man who made them out?

Mr. Parker: My admission as to them is only that they were issued by the W. R. Irby Branch of the Liggett and Myers Tobacco Company.

205 Mr. Duvic, recalled.

Direct examination.

By Mr. Schwarz:

Q. I show you two checks issued by the Nicholas Burke Company, numbered 25903 and 26630; will you look at those checks, please and state whether they were issued by the Nicholas Burke Company? (Counsel hands checks referred to to witness and witness examines same.)

A. Yes sir, they were.

Offer:

Mr. Schwarz: I offer in evidence two checks, marked Duvic 1 and Duvic 2, respectively.

Q. Did these bills come to the Nicholas Burke Company from the W. R. Irby Branch?

A. Yes sir.

Q. All of them?

A. Yes sir.

Offer:

Mr. Schwarz: I offer these bills in evidence, beginning December 16, 1911, and running to December 29, 1911, and mark them Duvic 3.

Offer:

Mr. Schwarz: We will offer the same, using the bills for January, 1912, beginning January 16, 1912, and running to January 31, 1912.

Q. Is that exactly the same as those bills?

A. Yes sir, they were sent by the W. R. Irby Branch.

Mr. Schwarz: I mark them Duvic 4.

No cross examination.

206 HENRY W. COBB, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. Henry W. Cobb.

Q. What is your business?

A. Manufacturing cigars.

Q. With what company are you connected?

A. Hershheim Company, Limited.

Q. Is that a Louisiana corporation?

A. No sir.

Q. A New Jersey corporation?

A. Yes sir.

Q. How long has the Hershheim Company, Limited, been doing business in the State of Louisiana?

A. About five and a half or six years.

Q. What are the brands that are manufactured by the Hershheim Company, Limited?

A. There is one brand called Hershheim Brand only.

Q. Just state the other brands?

A. King's Court, Scapulet, Jackson Square, La Belle Creole, Louisiana Tiger, Insurgent—I believe that covers about all of them.

Q. Do you do any business on behalf of the American Tobacco Company?

A. We do not.

Q. Do you distribute any goods, manufactured by your company, on orders from them?

A. No sir.

Q. Did you ever do it?

A. No sir.

207 Q. Has the American Tobacco Company indirectly or directly an interest in the Hershheim Company, Limited?

A. No sir.

Q. Of what company is the Hershheim Company, Limited, a subsidiary?

A. None.

Q. It is an independent company?

A. Yes sir.

Q. When did it become an independent company?

A. In October, 1911.

Q. Was any of its stock owned or controlled by the American Tobacco Company or any of its subsidiaries at that time?

A. Prior to October, 1911, it was.

Q. What was the situation prior to October 1911?

A. The American Cigar Company owned its preferred stock, all of it, and two-thirds of the common stock.

Q. And the American Cigar Company was in turn a subsidiary of the American Tobacco Company?

A. I am speaking of the American Cigar Company.

Mr. Parker: I admitted that.

Q. After 1911, did the Hershheim Company, Limited, have any relationship with any other company at all?

A. No sir, not after October 15, 1911.

Q. Did you act for any other company besides yourself?

A. We did, were the local agents for the British-American for a while and are yet in one particular.

Q. That is, from October 1911, you were the local agents for the British-American, and you say in one particular you still are? Is that correct?

A. Yes sir, but I didn't say since October 15, 1911; I say at one time since then we acted as agent for the British-American.

208

Q. When was that?

A. I don't remember, it was possibly a year and a half or two years ago.

Q. Sometime in 1912 or 1913?

A. It was probably 1913; I would not be sure as to that.

Q. It was, in other words, about 1913, that you ceased to act, except in this one particular you were speaking of, is that correct?

A. I will answer the question over again. My company acted as local agent for forwarding certain brands of goods for export for the British-American; we began that, I should say, somewhere around in 1913; it might have been earlier in the year, or a little prior to that.

Q. But previous to that time—

A. We had no dealings with any other Company.

Q. You did no exporting for any other company at all?

A. No sir.

Q. You took no orders for export for any other company?

A. No sir.

Q. What was the nature of your business, domestic or export?

A. Domestic; we exported a few cigars to Central American points,

but not enough to amount to anything; I want to mention that because I want to be exact, but it is of no consequence.

Q. Did you all handle the perique tobacco?

A. That is what I mentioned just now, we handled the perique and distributed it for the British-American as agent.

Q. Did you handle it previously at all?

A. Not previous to 1913.

Q. Who did handle it previous to 1913, do you know?

A. I don't know positively; I have a general idea.

The Court: The British-American has nothing to do with the case, anyhow, has it?

209 Mr. Schwarz: The British-American was part of the American Tobacco Company at this time.

The Court: The American Tobacco Company owned stock in it, and it has been admitted that the British-American Tobacco Company was doing business here to the extent that they were running this Black Horse Warehouse Tobacco Company.

Mr. Schwarz: He didn't say he had this knowledge, he said he had a general understanding about it.

Mr. Parker: If he knows, we have no objection; if he does not know he cannot testify about it.

Witness: I don't know anything about it; I paid no attention to it, but I did hear how it was handled before we took it over.

Q. Where did you get the information?

A. I got the information from the British-American Tobacco Company, they told me when my company was asked to handle it how they had handled it before.

By the Court: Go ahead and tell us, I suppose the Irby Branch of Liggett and Myers Tobacco Company bought it, is that it?

A. That is what I understood at that time.

The Court: That is already in evidence.

Mr. Schwarz: Not about perique tobacco.

The Court: Ask the questions and develop what the facts are you want?

By Mr. Schwarz:

210 Q. Who, for the British-American Company, told you this, who was the party who spoke to you about it?

A. Correspondence with the people in the New York office of the British-American Tobacco Company.

Q. Did you have any conversation with Mr. Irby about it?

A. No sir, I don't remember of any.

Q. Did you use perique yourself during 1911?

A. No sir, we didn't use it at all.

Q. You didn't use it in your manufacturing?

A. No sir.

Q. Did you keep any perique in the warehouse of the Hershheim Company?

A. Not in the Hershheim Company's factory.

Q. Well, anywhere?

A. We stored perique for the British-American Tobacco Company.

Q. Did you do this before 1913?

A. We did not.

Q. Where was the perique stored—what place in the city, I mean?

Mr. Parker: By Mr. Cobb's Company or before his connection?

Mr. Schwarz: Both.

A. I understand it is stored at present in a house we have rented for the British-American Tobacco Company.

Q. Was that connected—I mean connected physically, that property, physically connected with the Irby Branch?

A. No sir, it is not; it is three or four squares from the Irby Branch.

Q. The American Cigar Company is lessor?

A. I don't know as to that.

Q. To whom do you pay rent for that property?

A. I can't answer that question, it is handled by the Secretary and Treasurer of my company.

Q. At the home office, you mean?

211 A. Yes, sir.

Q. Is the home office in New Jersey or here?

A. Here.

Q. Then, you say the Secretary and Treasurer will know about that—you don't know?

A. I don't know personally. I really don't know. I don't know whose name the property is in; I would suppose—that would be just supposition on my part—I would suppose the name of the property is in the name of the American Cigar Company, but I cannot state that positively.

Q. You have a lease on the premises?

A. Yes, sir.

Q. Would you be good enough to produce the lease here?

A. I would have to go to the office to get it.

At this point the Court adjourned for recess.

After Recess—2 p. m.

A. S. PERRY, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. A. S. Perry.

Q. What is your business?

A. Clerk for the Panama Railroad Company.

Q. Did the Panama Railroad Company do business with the American Tobacco Company in this city during 1910 and 1911, and up to December 1, 1911?

212 A. Up to, I think, January 27th, shipments of cigarettes were made through here.

Q. Who was it here that attended to that?

A. Major Lawton, the Army Officer in charge of the Purchasing Department of the Panama Railroad Company at that time.

Q. I mean from what establishment?

A. My understanding is that the tobacco was supplied by the Irby Branch.

Q. As of what date?

A. January 27th, 1912, the last shipment was forwarded under these different orders we had.

Cross-examination.

By Mr. Parker:

Q. For account of the British-American Tobacco Company?

A. Yes, sir, they sent us copies of orders to look after the shipments here.

A. L. RAU, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. A. L. Rau.

Q. You are connected with the Crescent Cigar and Tobacco Company?

A. Yes, sir.

Q. That is a tobacco jobber?

A. Yes sir.

Q. What are the brands of the American Tobacco Company of cigarettes, cigars and tobacco that you handle?

213 A. We handle all those that are sold in this market here, like Bull Durham tobacco, Sweet Caporal Cigarettes, and plug tobacco.

Q. Can you name a few more?

A. Peace and Good Will, Catalinas, United States Guarantee.

By the Court:

Q. Did you buy any tobacco from the American Tobacco Company in December, 1911?

A. Sure.

Q. Or January, 1912?

A. January 1912? No sir.

Q. Who did you buy it from?

A. From the American Tobacco Company.

Q. Where?

A. New York.

Q. Did you buy any here from the W. R. Irby Branch, Liggett and Myers Tobacco Company?

A. No sir.

The Court: Isn't that all you want to know?

Mr. Schwarz: No.

Q. Are you a distributor of the brands of the American Tobacco Company?

A. We distribute it like we sell other tobaccos.

Q. What arrangements have you with the American Tobacco Company so far as distributing, or otherwise, is concerned?

A. We buy our stuff from the American Tobacco Company and pay our bills.

Q. Do you get any commission on the sales?

A. No sir.

Q. Is the American Tobacco Company the owner of any stock in your company?

214 A. Absolutely not.

Q. When I say American Tobacco Company, I mean it or any of its subsidiaries?

A. No sir, none; no companies.

Q. Is your company indebted on notes to the American Tobacco Company?

A. Yes sir.

Q. For how long?

A. Several years.

Q. What do they represent?

A. Money loaned.

Q. Do you sell Riz La Croix paper on behalf of the American Tobacco Company?

A. We sell Rix La Croix paper, yes sir.

Q. Do you sell it at the same price that the American Tobacco Company sells it?

A. Sure not; we sell it as jobbers; we don't sell it at the same price we but it.

Q. What I mean is this; do you sell to the jobber at the same price as the American Tobacco Company sells to the jobber?

A. No sir.

Q. Did you do it?

A. We may have; I don't recall.

Q. Who would know about that?

A. I ought to know.

Q. You wouldn't say whether you did it or not?

A. No sir, I am not sure; anyhow, we have not sold it recently.

Q. Have you acted up to December 1, 1911, in any respect whatsoever, directly or indirectly, for the American Tobacco Company?

A. Up to December 1, 1911? I was formerly employed by the American Tobacco Company.

215 Q. I mean, what I say you, I don't mean you personally, I mean the Crescent Cigar and Tobacco Company?

A. I don't think so, in what respect?

Q. I mean did you get goods from them which you subsequently sent out on orders from their customers?

A. To their customers, no sir. We did a jobbing business; we

would get orders and ship them, but we didn't handle anything for account of them. Whatever we did we did for ourselves.

Q. I mean did you have any of their goods on hand that you didn't pay for until you sold them?

A. Absolutely nothing.

Q. Goods on storage?

A. No sir.

Q. Did you have any goods on consignment?

A. Nothing; we have to pay our bills just the same, promptly discount all our bills.

Q. I understood you to answer the Court—I didn't hear it very well—but I understood you to answer the Court, that since December 1, 1911, as well as before, you have handled the different brands of the American Tobacco Company in the way you indicate?

A. Since we have been in business we have been handling their brands.

Q. Selling them throughout Louisiana?

A. Yes sir.

Q. Have you got any representatives on the road who are in the employ of the American Tobacco Company, or who are paid by the American Tobacco Company?

A. No sir, we have our own regular employes, paid by ourselves.

Q. I don't know just what you mean by saying our own?

A. You asked me if we had any salesmen employed that are paid by the American Tobacco Company; all our salesmen
216 that are employed are paid by ourselves.

Cross-examination.

By Mr. Parker:

Q. The Crescent Cigar and Tobacco Company has borrowed some money from the American Tobacco Company at one time?

A. Yes sir.

Q. And the notes never have been fully paid?

A. No sir.

Q. Was that from the W. R. Irby Branch of the American Tobacco Company, or was the loan from the American Tobacco Company's New York office?

A. From the New York office of the American Tobacco Company.

By Mr. Schwarz:

Q. You and your associates acquired the interests of the American Tobacco Company in your company, did you not?

A. Yes sir.

Q. For which you also gave notes for the stock, did you not, for that interest?

A. By notes.

Q. Have those notes ever been liquidated?

A. Not in full; we have paid on account; we have reduced them.

Mr. Schwarz: I forgot to offer this document in evidence, which I do now, in connection with the testimony of Mr. Cobb, and mark it Cobb 1.

HAMILTON GUENARD, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

217 A. Hamilton Guenard.

Q. What is your business?

A. Wholesaler of cigars and tobaccos.

Q. How long have you been in that business?

A. Twenty years.

Q. Did you handle, prior to December 1, 1911, any brands of the American Tobacco Company?

A. Prior to December 1, 1911, yes sir.

Q. Have you handled them since December 1, 1911?

A. From December 1, 1911, I don't think I have, no sir, I have not—wait, I am mistaken there; I handled the Irby Branch—you mean product from the Irby Branch or the American Tobacco Company?

Q. I mean the brands of cigars, cigarettes or tobaccos?

A. I understand, but there was the W. R. Irby Branch of the American Tobacco Company, and then there was the American Tobacco Company; I did business with both concerns.

Q. Prior to December 1, 1911, did you handle brands of both concerns?

A. No sir, I didn't buy any goods from the W. R. Irby Branch of the American Tobacco Company after November 29, 1911.

Q. I said prior?

A. No sir.

Q. Prior to November 29, 1911?

A. Prior to November 29, 1911, yes sir.

Q. You handled brands of the W. R. Irby Branch?

A. Yes sir, and of the American Tobacco Company.

Q. And the other companies of the American Tobacco Company?

A. Yes sir.

Q. Since that date have you handled any brands of the other companies of the American Tobacco Company, other than the Irby Branch?

218 A. There was no more Irby Branch after that; I bought goods from the W. R. Irby Branch of the Liggett and Myers Tobacco Company.

Q. Did you handle any orders other than those manufactured by that Branch?

A. Yes sir, I still handle goods from the American Tobacco Company.

Q. In other words, you have handled certain brands manufactured by the American Tobacco Company all along, before and after December 1, 1911?

A. Yes sir, up to the present day.

Q. Have you got control of any brands for them?

A. The American Tobacco Company?

Q. Yes?

A. No sir.

Q. Of cigars?

A. No sir.

Q. Do you handle the United States Guarantee?

A. Yes sir, I do.

Q. How do you buy it?

A. I buy it from the American Tobacco Company's New York office, 111 Fifth Avenue.

Q. To whom do you send the order?

Q. I send it direct to 111 Fifth Avenue, New York.

Q. Have there been any salesmen of the American Tobacco Company from whom you have ever bought any of their brands?

A. Off and on, Mr. Brau, who is a clerk of mine, compliments salesmen, gives them a complimentary order. Instead of sending the order in direct to the factory he will tell Mr. McCreary, or some other representative, they have three or four of them here, he will give them an order and they will send it to New York, and it saves a 2¢ stamp.

Q. Have you had orders turned over to you by any salesmen or representatives of the American Tobacco Company since the 1st. of December, 1911?

A. You mean the American Tobacco Company, of New York?

Q. Yes?

A. They occasionally go out and sell goods, take the order, come to the store, get the goods, pay me for them, and go out and deliver the goods for me. They do that on their own account.

No cross-examination.

D. B. MARTINEZ, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. D. B. Martinez.

Q. What is your business?

A. Cigar business.

Q. With whom?

A. U. Koen and Company, Incorporated.

Q. What brands of the American Tobacco Company of tobaccos or cigarettes do the U. Koen and Company handle?

A. On cigars we handle only two brands belonging to them; on cigarettes—

Q. Will you name them?

A. Preferencia and Principe de Gales cigars; we use cigarettes belonging to everybody.

Q. You use some from the American Tobacco Company, too?

220 A. Yes sir, but I don't know anything about the cigarette business; Mr. Louis Koen is the one who attends to that.

Q. You are the cigar man?

A. Yes sir.

Q. How about tobacco?

A. The same thing; we handle tobacco belonging to everybody.

Q. The Principe de Gales and the Preferencia are made by what company—manufactured by what company?

A. The Havana-American Company; you know there are two companies; they are similar, one to the other.

Q. What is the other?

A. The American Cigar Company.

Q. You do business with them, too?

A. With both.

Q. Can you name some of the tobacco brands you are handling, or are you familiar with them?

A. I am not familiar with them?

Q. Who is familiar with them?

A. Mr. Louis Koen.

Q. Will you state the conditions under which you handle these brands?

Objection.—Mr. Parker: This is dealing with the Havana-American Company.

The Court: I sustain the objection; there is only one company under inquiry here.

Mr. Schwarz: The Havana-American Company, it has been shown by admission of counsel, is presently and always has been under the domination of the American Tobacco Company.

The Court: You cannot show it any more than you say it is already admitted.

221 Mr. Schwarz: We are trying to show the business here and the nature of it. It has not been admitted how exactly they represent the other companies, in what way.

The Court: Why don't you ask him the direct questions? It will save a lot of time, there is no use——

Mr. Schwarz: I asked him what was the arrangement under which they handled these goods.

The Court: If the Havana-American Company is the American Tobacco Company in disguise, you can bring that fact out.

Q. Please read the question to the witness. (Question read.)

A. Under the same conditions as everybody.

Q. Please state the conditions.

A. We have no conditions; we buy the goods and pay for the goods.

Q. Are you distributors?

A. Only for New Orleans.

Q. What do you mean by saying you are distributors for New Orleans only?

A. If anybody else handles the same goods we handle, you know, we don't handle them at all. If you have a piece of goods and you

come to me, and I think anything about the piece of goods, I will try, you know, to handle that goods in the state of Louisiana, or for New Orleans, and if you pretend to send it to anybody else, I don't handle it at all.

Mr. Parker: I admit that the Havana-American Company confined its sales in the state of Louisiana of Preferencia and Principe de Gales cigars to U. Koen and Company.

Mr. Schwarz: Do you admit the same as to the American Cigar Company?

222 Mr. Parker: I don't know what brands he refers to.

Witness: Preferencia and Principe de Gales.

Q. Are those the only two brands of cigars that the American Tobacco Company, or any of its subsidiary companies, have, that you are handling?

A. It makes many brands.

Q. Will you please state some of the others that you handle?

A. Idols that is made by the Hershheim Company.

Q. Please state some more brands—you said you are handling many brands manufactured by the American Cigar Company?

A. The two principal brands we handle are the Preferencia and the Principe de Gales, like I told you before—The Havana-American Company, the names are so familiar that I confuse one with the other.

Q. The question is plain: I asked you whether you are handling, besides the Principe de Gales and the Preferencia, any other cigars that the American Tobacco Company manufactures?

Mr. Parker: I hope you will make that clear; the fact is, of course, that the American Tobacco Company don't make cigars.

Witness: That is correct.

Q. Do you handle any other brands besides those you mentioned, of cigars which are made by any of the subsidiary concerns of the American Tobacco Company?

A. Let me see, I think we handle Idols, which are made by the Hershheim Company; I think that is all from that company.

Q. You mean that U. Koen and Company handles only three brands of cigars manufactured by the subsidiaries of the American Tobacco Company?

223 A. We handle other brands that do not belong to the Havana-American Company.

Q. I did not ask you about the Havana-American Company.

A. Let me see, what is the—

Q. I asked if you handled brands of any other subsidiary of the American Tobacco Company?

A. Yes sir, we handle Chancellors, Anna Held, and Premos; I think that is all.

Q. Who makes those, do you know?

A. Chancellors is the other company, the American Cigar Company; Anna Held is the same thing, American Cigar Company. It will be impossible to give you the names because sometimes we

change the names ourselves; you know the company has nothing to do with that. It would be impossible for me to give you all the names.

Q. You said you were distributor for New Orleans of the two brands you mentioned?

A. Yes sir.

Q. Are you the distributor either for New Orleans, or any other place in Louisiana, of any other brands?

A. Oh, yes.

Q. I am speaking——

A. Of other companies?

Q. —of the subsidiaries of the American Tobacco Company.

A. No sir.

Q. What goods are consigned to you by the subsidiaries of the American Tobacco Company?

A. None; we have to buy them straight; they do not consign any goods to anybody as far as I know.

Q. Do you get inside prices?

Objection.—Mr. Parker: I object to any further testimony on the subsidiaries of the American Tobacco Company. I do this in the interest of time, and I ask what counsel expects to prove by
224 this witness.

Mr. Schwarz: Your Honor stated it, if the American Tobacco Company is trying to disguise itself by some subsidiary, we are entitled to show it. In other words, if the Havana American Company, or the American Cigar Company, are here doing business, and if they are the same as the American Tobacco Company, we are entitled to show that.

The Court: Go ahead, Mr. Schwarz; we will save time by going ahead.

Q. Read the question? (Question read.)

A. What do you mean by inside prices?

Q. Do you get special terms?

A. No sir.

Q. Other than allowed to other jobbers?

A. No sir.

Q. Do you get any discount other than allowed to other jobbers?

A. Everybody gets the same discounts.

Q. Do you get any rebates?

A. No rebates at all.

Q. Did you ever, during 1912 or 1913?

A. Get rebates?

Q. Yes, get any checks sent you from the American Tobacco Company in the form of rebates, or anything else you choose to call it?

A. As far as I know, no sir.

Q. Who would know about that in U. Koen and Company?

A. I suppose New York.

Q. What do you mean by New York?

A. The company.

Q. I mean who at U. Koen and Company would know that?

A. As far as I know we got no rebates at all

225 Q. No, but if you got any, who would be the man to know it?

A. We have rebates this way, if we sell 2500 Preferencias, say in the country of Louisiana, or any place, we notify the company. The company don't rebate to us, it rebates to that one who buys the goods, you know, to get the rebate—if you call that any rebate.

Q. You mean that the jobber in the country would get the goods at the same figure you get them?

A. Certainly not, if he did we would stop buying goods from them, that is one thing sure.

Q. Has the American Tobacco Company any interest in your company?

A. No sir.

Q. Or any of its subsidiary companies?

A. Nobody, only these people—I will give you the names if you wish them?

Q. Didn't you all acquire the Southern Tobacco Company from the American Tobacco Company?

A. I don't know if that is the name—you mean the company—that is over 12 years ago. We acquired that in this way; I took all the goods at cost price, that is all; we only took the goods at cost price.

Q. Did the American Tobacco Company ever make loans since December, 1911, to U. Koen and Company?

A. We never have a loan from any company. When we borrow we borrow here, from the New Orleans National Bank; that is the only bank we borrow from.

No cross-examination.

J. F. SAULSBURY, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

226 A. J. F. Saulsbury.

Q. You are connected with the W. R. Irby Branch of the American Tobacco Company?

A. No more, no sir.

Q. I say you were connected with it?

A. Yes sir.

Q. For many years?

A. Yes sir.

Q. And you are now connected with Liggett and Myers, the W. R. Irby Branch of Liggett and Myers Tobacco Company?

A. Yes sir.

Q. In what capacity were you connected with the Irby Branch of the American Tobacco Company?

A. Salesman; I had charge of the shipping department, and also the exports.

Q. Did you have power of attorney to represent the American Tobacco Company in its export business?

A. Yes sir.

Q. Was that power of attorney filed in the Internal Revenue Department here?

A. I think so.

Q. Is it still here, so far as you know?

A. I don't know if it was ever revoked; I cannot say.

Q. You don't know? You have received no instructions about its revocation?

A. No sir.

Q. From whom did you get the right to represent the company in the exporting department; I mean under whose authority did you get the right?

Objection.—Mr. Parker: If you are speaking of the authority in the sense of special authority, the power of attorney will show where he got the right. I can furnish a copy of what I suppose is the power of attorney.

227 Mr. Schwarz: I asked him what individual gave him instructions.

Mr. Parker: I have no objection to that.

Q. Under whose instructions did you act?

A. Well, the power of attorney came from New York, the way I understand it; I saw it at that time, that is all I can say.

Q. You know under whose instructions you acted?

A. The American Tobacco Company.

Q. And what representative of that company in this city?

A. The W. R. Irby Branch it was at that time.

Q. And what person, if any, in that branch?

A. W. R. Irby.

Q. Are you acquainted with the rules pertaining to the exporting of goods?

A. Yes, sir.

Q. In order to export goods, do you have to give any bond?

A. Yes, sir.

Q. Was that bond given on behalf of the American Tobacco Company when you acted as the exporting agent here in the way you speak of?

A. Every time I made an export we gave bond at the time.

Q. Did you have any general bond recorded with the Internal Revenue Department?

A. No, sir, not that I know of.

Q. Didn't you have a yearly bond in order to continue doing business?

A. There has been some change in the Internal Revenue Department in regard to bonds.

Q. I mean during 1911 and 1912?

A. Yes, sir, there was a change.

Q. You had to have one then?

228 A. Yes, sir.

Q. And you did have one?

A. Yes, sir.

Q. Was that bond ever changed?

A. Not to my recollection.

Q. Did you attend to the shipment of any goods for export during 1912?

A. I did, for the British-American Tobacco Company.

Q. What did you export?

A. Cigarettes.

Q. Only cigarettes?

A. Yes, sir, under Liggett and Myers, though, that was handled; the Liggett and Myers Tobacco Company had the power of attorney to handle it that way.

Q. Did you attend to the exporting of any goods for the American Tobacco Company?

A. No, sir.

Q. For the Black Horse Warehouse Tobacco Company?

A. No, sir.

Q. By whom were the goods that you exported manufactured?

A. By the Liggett and Myers Tobacco Company.

Q. Where?

A. In the City of New Orleans.

Q. Did you export any goods on behalf of the jobbers, orders coming from jobbers?

A. I got the orders from the office; I don't know who they came from.

Q. Who in the office would know that?

A. Well, Mr. A. C. Dumestre can give you that information.

Q. Who enters the memorandum of the bills?

A. I cannot tell you; I didn't do any billing.

Q. Which Mr. Dumestre, you say would know that?

A. Mr. A. C. Dumestre.

229 Q. You, yourself attended to the shipping, I understand, did you not?

A. Well, all I attended to was the Custom-House work; that is all I attended to.

Q. You don't know whether you exported any goods on behalf of jobbing houses here in New Orleans for orders received?

A. I do know that.

Q. You do?

A. Yes, sir.

Q. Do you know whether those were orders that came from the American Tobacco Company, in them?

A. They did not, not that I know of.

Q. Do you know, or are you just in ignorance of that?

A. I don't know.

Cross-examination.

By Mr. Parker:

Q. Have you done any services whatever for the American Tobacco Company since December 1, 1911?

A. None whatever.

Q. So far as you have known, or believe, have you had any authority from the American Tobacco Company to do anything for it since December 1, 1911?

A. No, sir.

Q. Have you drawn any salary from the American Tobacco Company since December 1, 1911?

A. None whatever.

Q. Have you made any exportation, or attended to any, for the American Tobacco Company, since December 1, 1911?

A. None whatever.

Q. Have you had any connection with the American Tobacco Company since December 1, 1911?

A. None whatever.

230 By Mr. Schwarz:

Q. Has your authority to represent the American Tobacco Company under the powers of attorney you spoke of, been revoked since December 1, 1911?

A. I do not know.

F. D. PEYRONNI, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. F. D. Peyronni.

Q. You are assistant manager of the Irby Branch of the American Tobacco Company?

A. Well, not the assistant manager; I represented Mr. Irby in his business, and I handled the detail end of the business.

Q. You are now connected with the W. R. Irby Branch of the Liggett and Myers Tobacco Company?

A. Yes, sir.

Q. What brands of the American Tobacco Company had the Irby Branch of the American Tobacco Company on hand still to be distributed during December, 1911—brands of the American Tobacco Company, cigarettes and tobacco?

A. To be distributed from what, for sale or distributed?

Q. Either one?

A. There was none there for sale.

Q. What was there for distribution?

A. There was none there for distribution; there was some cigarette

231 paper there, belonging to the American Tobacco Company, on hand, which we shipped out on instructions from the American Tobacco Company.

Q. Any tobacco or cigarettes?

A. No, sir.

Q. Any Red Cross tobacco?

A. That is Lorillard's brand.

Q. Did you attend to the outstanding accounts of the American Tobacco Company?

A. Collected them; yes, sir.

Q. How long did you all continue to collect outstanding accounts due the American Tobacco Company from December 1, 1911—how long did it take you to get all those accounts collected?

A. I cannot tell you that; the accounts were transferred to Liggett and Myers Tobacco Company, and we continued collecting them in the regular course of business.

Q. Have you any idea how long it took before they were all paid up?

A. Well, we usually sell on terms, less 2% for cash in 10 days, and the majority of them would be for that period; there might have been some extended to probably 40 or 50 days afterwards.

Q. Don't you know there were some that did that?

A. No, sir, I do not know it.

Q. Who would know that?

A. The books would tell that.

Q. Have they all been paid, up to the present time even?

A. Oh, yes.

Q. Could you find out for us and let us know when the last ones were paid?

A. It would be a mighty big task to go through all the ledgers and look up each individual account.

Q. Did you get the outstanding accounts liquidated until
232 some time in January or February, 1912?

A. I feel reasonably sure they were all collected before February, 1912.

Q. Did you have authority to endorse checks for the American Tobacco Company?

A. No, sir.

Q. Or stamp them?

A. No, sir.

Q. Who had that authority?

A. The cashier.

Q. Who was he?

A. A. K. Niece.

Q. Cashier of what?

A. Cashier of the W. R. Irby Branch of the Liggett and Myers Tobacco Company.

Q. Before that, when it was the American Tobacco Company?

A. A. K. Niece, as well.

Q. In other words, they never revoked the power?

A. I do not know that; I cannot tell you that.

Q. Did you all ship any goods manufactured by any of the sub-

subsidiaries of the American Tobacco Company throughout the state of Louisiana?

A. When?

Q. After December 1, 1911?

A. Excepting cigarette paper and Red Cross tobacco.

Q. Did you export any on their behalf, either directly or through jobbers here?

A. We did ship some cigarettes; that is, we shipped some cigarettes for account of the British-American Tobacco Company.

Q. To where?

A. To Central American points.

Q. Where were those cigarettes made?

233 A. At the Irby Branch.

Q. In New Orleans?

A. Yes, sir.

Q. Did you all continue after December 1, 1911, to make shipments in which any brands of the American Tobacco Company were included?

A. No, sir.

Q. Do you know——

A. Why no, there was none made.

Q. When I saw American Tobacco Company, of course I mean any of its subsidiaries?

A. Included in their shipments?

Q. Yes?

A. Within the state here?

Q. Yes?

A. No, sir.

Cross-examination.

By Mr. Parker:

Q. The Irby Branch of the American Tobacco Company before December 1, 1911, occasionally exported goods of its own manufactured for account of the British-American Tobacco Company?

A. Yes, sir.

Q. The Irby Branch of the Liggett and Myers Tobacco Company after December 1, 1911, sometimes exported goods for account of the British-American Tobacco Company?

A. Yes, sir.

Q. What relation, if any, have you had with the American Tobacco Company since December 1, 1911?

A. Absolutely none.

Q. There was some Riz La Croix cigarette paper and Red Cross tobacco on hand on December 1, 1911, was there not?

234 A. Yes, sir.

Q. Did the Liggett and Myers Tobacco Company still bill any of that tobacco?

A. No, sir.

Q. Until that was exhausted you from time to time made deliveries in accordance with written directions as to the Riz La Croix paper and the Red Cross tobacco?

A. Yes, sir.

Q. Was that completed within a few months?

A. Yes, sir.

Q. When that stock was exhausted——

A. There was no more shipped us.

Q. Has the Liggett and Myers Tobacco Company at any time represented the American Tobacco Company in any way?

Objection.—Mr. Schwarz: Objected to as a matter of opinion.

A. No, sir.

Q. When the Liggett and Myers Tobacco Company acquired from the American Tobacco Company the Irby Branch, did it take it over as it stood, lock, stock and barrel?

A. Everything except some few transportation company claims.

Q. Which were in New York?

A. Being handled by the traffic department of the American Tobacco Company.

Q. And as to those transportation claims the Liggett and Myers Tobacco Company never took them over at all?

A. No, sir.

Q. Did you have on hand at that time certain stationery, including bill-heads, representing the American Tobacco Company?

A. Yes, sir, quite a quantity of it.

Q. Therefore, until the stock was exhausted, did you get new bill-heads, or did you send out bills and use the stationery
235 you had with the stamp of the Liggett and Myers Tobacco Company?

A. We stamped across it Liggett and Myers Tobacco Company, Successors, some of our old stationery.

Q. Including bills?

A. Including bills.

Q. Was there any bill collected after December 1, 1911, on account of sales of the Irby Branch that the money did not come to the Liggett and Myers Tobacco Company?

A. No, sir.

Q. Did the American Tobacco Company have a bank account here at that time?

A. After December 1, 1911?

Q. Yes?

A. Not to my knowledge.

Q. Would you have known it if the American Tobacco Company did have a bank account here?

A. I certainly would, yes, sir.

Q. There has been introduced by plaintiff certain bill-heads which bear the stamp Liggett and Myers Tobacco Company, dated after December 1, 1911; on about five or six of these bills the stamp is missing; will you please state how you account for that?

A. It is just an error on the part of some clerk in the office.

Q. In failing to stamp it?

A. Yes, sir; they had very positive instructions to stamp across all stationery of the American Tobacco Company, Liggett and Myers Tobacco Company.

Q. If money was received in the form of checks, or otherwise, in the payment of these bills, whether stamped or otherwise, to whose credit did it go?

A. To the credit of the Liggett and Myers Tobacco Company

236 Q. Did the American Tobacco Company have any interest in it whatever?

A. Absolutely none.

By Mr. Denegre:

Q. Is the Liggett and Myers Tobacco Company a competitor of the American Tobacco Company?

A. Yes sir.

By Mr. Merrick:

Q. In whose hand-writing are those bills?

A. I am no hand-writing expert, but I would take it to be——

By Mr. Schwarz:

Q. Who manufactures Fatima?

A. The Liggett and Myers Tobacco Company.

Q. How about Richmond Straight-Cut?

A. The Liggett and Myers Tobacco Company.

Q. Since when?

A. I don't know; as far as I can recall, since we have been a branch, the Liggett and Myers Tobacco Company——

Q. What do you mean by saying as far as you can recall?

A. We are the only selling agents for Liggett and Myers Tobacco Company's cigarettes, Richmond Straight-Cut & Fatimas, since the beginning of the year 1912; since then I know it to be a fact that they are the property of the Liggett and Myers Tobacco Company.

Q. Did you handle the finances of the branch here? You testified a moment ago that the money that came from these accounts, no matter how paid, went to the credit of the Liggett and Myers Tobacco Company; how do you know that?

A. I don't handle the finances, but I am credit man and I know they are placed to the credit of these very jobbers who——

Q. Do you know what was done with the money itself?

237 A. It was deposited in bank.

Q. And after it was deposited in bank, you don't know what became of it, do you?

A. To the credit of the Liggett and Myers Tobacco Company.

Q. Yes. You don't know whether any remittances were made on account of it, or not, do you?

A. On account of what?

Q. The American Tobacco Company?

A. I know positively there were no remittances made to the American Tobacco Company. It was deposited to the credit of the Liggett and Myers Tobacco Company in the Canal Bank and we sent Exchanges to St. Louis as the funds accumulated.

Q. You didn't attend to the Exchanges at St. Louis, did you?

A. No sir.

Q. What I am trying to get at is, do you know what became of the money that was deposited yourself?

A. No sir, in that respect.

Q. Do you know yourself whether the American Tobacco Company had a bank account here after December 1, 1911?

A. There was none, no sir.

Q. I say, do you know yourself whether they had one or not?

A. Our funds, the W. R. Irby Branch of the American Tobacco Company, were drawn and deposited to the credit of the Liggett and Myers Tobacco Company.

Q. Do you know whether the American Tobacco Company itself, aside from that, had any bank account here?

A. Not from the New York end, no sir.

By Mr. Denegre:

Q. Do you open the mail in the morning in which these checks come to pay bills?

A. Yes sir.

Q. You also write letters in which Exchange is sent to St. Louis by the Liggett and Myers Tobacco Company?

A. Yes sir.

Q. And you say the funds which were not needed here by this branch of the Liggett and Myers Tobacco Company were sent on to St. Louis to the Liggett and Myers Tobacco Company?

A. Yes sir.

Q. And were not sent on to the American Tobacco Company?

A. No sir, positively not.

By Mr. Schwarz:

Q. Did you all make any report to the American Tobacco Company of the outstanding accounts at all—I mean the outstanding accounts as of date December 1, 1911?

A. No sir.

W. H. BLACK, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. W. H. Black.

Q. What is your business?

A. I am cashier and auditor of the Havana-American Tobacco Company.

Q. How long have you acted in that capacity?

A. About ten years.

Q. The Havana-American Company has been in business during that time?

A. Yes sir.

Q. To whom, as auditor, do you send your reports?

239 A. As auditor I send them to J. Larsen Harding, auditor of the Havana-American Company, 111 Fifth Avenue, New York.

Q. Is 111 Fifth Avenue, New York, the headquarters of the Havana American Company?

A. I believe it is.

Q. Is it the headquarters of the American Cigar Company?

A. Yes sir.

Q. And likewise of the Havana-American Company?

A. Yes sir.

No cross examination.

LOUIS KOEN, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. Louis Koen.

Q. You are one of the members of U. Koen and Company?

A. Yes sir.

Q. Distributors of cigars, tobaccos and cigarettes?

A. Yes sir.

Q. I believe you have charge of the department of cigarettes and tobacco?

A. Yes sir.

Q. What cigarettes and tobacco manufactured by the American Tobacco Company do you handle?

A. We handle a variety of them; Sweet Caporals, Omars, Cairo—that is all I can recall now.

Q. How long have you all been handling these brands that you mention, and others that you cannot recall?

240 A. We have been handling Sweet Caporal for some time, and with the exception of Cairo cigarettes, we have been handling the others for some time.

Q. Approximately, how long in years, five or six?

A. About that, possibly longer.

Q. Are you the distributing agents of any brands of the American Tobacco Company of cigarettes and tobacco?

A. No sir.

Q. In New Orleans or in Louisiana?

A. No sir.

Q. You say you are not?

A. We are not distributing agents.

Q. What are you?

A. We are just jobbers.

Q. Are you distributing agents of any other cigars?

A. Yes sir.

Q. What brands of tobacco; will you name some of the tobacco brands you are handling?

A. Buckstone, English Cross-Cut, Bull Durham, and United States Guarantee.

Q. What arrangement have you got with the American Tobacco Company about the handling of their goods, and when I say American Tobacco Company, I am including its subsidiaries as well as the parent Company?

A. We have no arrangement whatever; we buy the goods direct and sell them at a price we think will give us a legitimate profit.

Q. Do you get any special discounts from them?

A. No sir, except circulars they send out once in a while, if we increase our purchases over a certain amount.

Q. Do you handle any cigarette paper for them?

A. Yes sir.

Q. What?

A. Riz La Croix.

Q. Are those circulars you speak of printed circulars?

241 A. Yes sir.

Q. Do they bear any resemblance to certificates like this page I show you here, the first one, which is dated December 9, 1911, No. 508; the second one dated November 25, 1911, No. 497, and the third one, dated December 13, 1911, No. 512?

A. It resembles it on the face, but I do not know about the reading matter.

Q. I just mean they have a resemblance and effect similar to the circulars you do receive and have received?

A. Yes sir.

Q. Have the American Tobacco Company's representatives ever sold any goods for your account and then sent in the order to you all to send the goods?

A. Yes sir.

Q. They have sold the goods and then sent you the order and you shipped the goods?

A. Yes sir.

Cross-examination.

By Mr. Parker:

Q. You control on this market certain brands of cigars, do you not?

A. Yes sir.

Q. Those are brands of the Havana-American Company or the American Tobacco Company?

A. Yes sir.

Q. The American Tobacco Company, itself, does not make cigars, does it?

A. No sir.

Q. When you speak of being agent, you only mean that these particular brands are not sold to anybody but you?

A. That is right.

242 Q. And they are sold outright to you?

A. Yes sir.

Q. And you make whatever price you please?

A. Yes sir.

Q. Therefore, strictly speaking, you are not the agent, are you?

A. We would be called a distributor for the factory.

Q. You are a jobber, but only a jobber of those brands?

A. Yes sir.

By Mr. Schwarz:

Q. Do you get any special prices or rebates from the American Tobacco Company?

A. No sir.

Q. Do you get any special discounts from them?

A. No sir.

Q. Do you get any bonus of any kind?

A. No sir, the only thing we get is what I mentioned about the circulars.

Mr. Parker: Simply to save time, I would suggest that that is not rebuttal in any way.

The Court: I understand from what he said that he is going over the same thing again. Now, then, they get a circular that tells them if they increase their purchases to a certain amount they will get—

Q. Will you look at this document we have here and say if that has anything to do with U. Koen and Company?

A. I don't remember seeing this before.

Q. Do you know whether that was issued by U. Koen and Company?

A. I cannot say.

Q. Have you ever seen this before?

243 A. I do not remember seeing it.

Q. Nothing that resembles that?

A. I do not recollect it.

Q. You never saw anything like that before?

A. No, not that I remember.

J. H. HYNXON, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. J. H. Hynson.

Q. You are a deputy of the Internal Revenue Department of the United States?

A. Yes sir.

Q. I show you a book of regulations, dated July 1, 1910, Washington Government Printing Office, entitled Regulations, will you

look at it and state whether that book is an official publication of the United States Government with respect to Internal Revenue Regulations? (Counsel hands book referred to to witness and witness examines same.)

A. Yes sir, covering tobacco and cigars.

Q. Were those regulations in force during 1910, 1911, 1912, and 1913?

A. Yes sir.

Offer.—Mr. Schwarz: We offer this book in evidence in connection with the testimony of the witness, and mark it Hynsin 1.

Q. When goods are shipped, for export, is there, under the
244 Government Regulations, to be lodged with the Internal Revenue Department, an outstanding bond by the Company that wishes to ship the goods that way?

A. Yes sir.

Q. How long does that bond remain in force?

A. They are given a reasonable time to produce proof of importation into a foreign country, in 45 days to be renewed.

Q. Is there a bond known as a yearly bond?

A. Yes sir, some manufacturers give an annual bond.

Q. How long does that bond remain in force?

A. That is a continuing bond.

Q. Was such a bond given by the American Tobacco Company?

A. I cannot answer that question; I do not know of my own knowledge.

Q. Who, in the Internal Revenue Department, would know that?

A. The man in charge of the deputy collector's desk.

Q. Will you give us his name?

A. George U. Nelson?

Q. If such a bond was given would you know whether it was changed or revoked, or would Mr. Nelson be the man to know that?

A. If it was changed?

Q. Changed or recalled?

A. Yes sir, he is bound to keep a record of the date and approval of the bond.

Q. He is the one who would know about that and not you?

A. Yes sir.

Q. Must there be, under the Regulations, lodged in the Internal Revenue office, powers of attorney for companies that desire to ship goods for export?

A. Yes sir, where other persons than the accredited officer of the company signs.

Q. Was such power of attorney, on behalf of the American
245 Tobacco Company, lodged in the office of the Internal Revenue Department during 1911, 1912, and 1913?

A. There must have been, probably several of them.

Q. So far as you know, were those powers of attorney revoked by the American Tobacco Company?

A. Not to my knowledge; I do not know.

Q. If a company disposes of its property to another company, is

it not a requirement that report should be made so that the proper bond can be secured?

A. Any company doing business passing through the Department has to give a bond and has to file an opening and a closing inventory.

Q. And if a company that has such a bond filed wanted to transfer its property to another company, how is that indicated?

A. The new company would file an opening inventory and file a proper bond.

Q. Does an inspector call to see the transfer from the old to the new?

A. An inspector has to check up the stock so as to verify the inventory.

Q. Do you know whether or not Mr. Irby was representing the Black Horse Warehouse Tobacco Company so far as the Internal Revenue Department's records show, in 1912?

A. Whether he was representing it, I do not know.

Q. I mean was there anything lodged in the Internal Revenue office showing that he had power to represent it in all respects?

A. I must decline to answer that question.

Q. Will you state why?

A. Because I am prohibited by the Regulations.

Q. Will you state whether or not there was any authority filed in your office for Mr. Irby to represent that company?

246 A. The collector is the man to testify in regard to such matters.

Q. You mean you would rather for the collector than yourself to disclose that fact?

A. Yes sir.

Q. Would you feel the same way about stating whether there was any resignations that passed through your office?

A. How is that?

Q. I say, would you feel the same way about stating whether there was a resignation from Mr. Irby that passed through your office?

A. Yes sir, I would.

Q. You would rather have that stated by the collector himself?

A. Yes sir.

Q. The collector is Mr. Fauntleroy?

A. Yes sir.

Q. And the records in your office would show the facts we are inquiring about, if they are facts?

A. Yes sir, but we are prohibited from producing such records; I have to decline to produce the records.

Q. We don't care about your records, what we want to know is whether a person had power of attorney lodged in your office?

A. I cannot say of my own knowledge. Anyhow, I could not produce it; I don't keep those powers of attorney.

Q. Who in the office keeps them?

A. I suppose the deputy collector has them, Mr. Nelson.

By Mr. Denegre:

Q. You remember my calling to see you yesterday, with Mr. Parker, to find out whether the records of your office showed a closing of the American Tobacco Company, and the opening of the Liggett and Myers Tobacco Company?

A. Yes sir.

247 Q. And you referred me to Mr. Nelson?

A. Yes sir.

Q. Do you know Mr. Nelson's hand-writing?

A. Yes sir.

Q. You asked him to look it up and he handed me a memorandum, did you not?

A. Yes sir.

Q. See if this memorandum is in Mr. Nelson's hand-writing and what it contains?

A. This is Mr. Nelson's hand-writing; there is nothing prohibited about the opening or closing of an inventory.

By Mr. Schwarz:

Q. Is there anything about giving the dates of the lodging or withdrawing of powers of attorney?

A. I cannot give you dates, because I do not know; I do not know whether there was any such powers of attorney.

Q. Where is the violation of duty in the one case as against the violation of duty in the other case. We do not ask you for your original record?

A. I cannot answer of my own knowledge; I do not know.

Q. You cannot answer that from your personal knowledge?

A. No sir; I am only answering that that is Mr. Nelson's hand-writing.

By Mr. Denegre:

Q. You are chief deputy collector, are you not?

A. Yes sir.

Q. I went to your office yesterday to make certain inquiries of you, and you told me I could obtain a memorandum from Mr. Nelson, and you asked Mr. Nelson to prepare for me the data of what his books showed, and Mr. Nelson handed me that paper; now I ask you to say what that paper states.

248 Objection.—Mr. Schwarz: I object to this witness stating it when Mr. Nelson is available.

By Mr. Merrick:

Q. We will ask Mr. Nelson what his books show in regard to Mr. Irby's resignation.

A. I don't know whether his books would show that.

By Mr. Schwarz: Q. The resignation that we are inquiring about is the resignation that Mr. Irby sent as representing the Black Horse Warehouse Tobacco Company.

By the Court:

Q. How do they do that, the exporter files power of attorney?

A. Yes sir, because one of the officers is not always in the city and that power is delegated to some one else.

Q. When that particular person ceases to represent the exporter how is that authority terminated?

A. Usually by withdrawing the power of attorney and resigning from that position. Some one else would act as agent.

By Mr. Schwarz:

Q. Our question is merely whether such a thing was done by Mr. Irby, representing the Black Horse Warehouse Tobacco Company; would you kindly answer that question?

A. The collector would have to answer that.

Q. Can we get the collector?

A. The collector is not in his office; he has left for the day.

Mr. Parker: If the gentleman will co-operate with me in making an admission, I believe we can settle this matter. I have data from my home office showing there were powers of attorney for these custom-house matters issued as follows: March 8, 1899, W. R. Irby, Emile Tebbe and E. P. Dumestre; March 29, 1899, the same; September 22, 1899, the same; October 31, 1900, for some reason, the authority heretofore given to E. P. Dumestre was revoked; October 31, 1900, power of attorney was given to Mr. Saulsbury, he being added. September 25, 1901, Mr. Tebbe's power of attorney was revoked. October 20, 1904, powers of attorney were given to W. R. Irby, Rau, Dumestre and Saulsbury. Here is a copy of the memorandum which I hold in my hand. I am willing to admit that there has never been revoked by action filed in the Internal Revenue and Customs office any of those powers of attorney. On the other hand it is shown that the American Tobacco Company's factory was closed November 29, 1911, that the Liggett & Myers Tobacco Company tendered bond on November 27, 1911, that the bond was approved and the factory opened December 4, 1911; and furthermore, that the American Tobacco Company does not appear in the Internal Revenue Department of this district, and has never appeared, since December 1, 1911. If you will make that admission, we will.

NOTE.—These powers of attorney stand unrevoked so far as the Internal Revenue office is concerned.

Admission.—It is admitted that the W. R. Irby Branch of the Liggett & Myers Tobacco Company, ceased this Black Horse Warehouse Tobacco Company's business in July, 1912.

A. S. DEBEN, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

250 A. A. S. De Ben.

Q. You are connected with the Crescent Cigar & Tobacco Company?

A. Yes sir.

Q. Will you look at this memorandum which I show you and state what it is?

A. Three packages of Durham Tobacco.

Q. By whom was it issued?

A. The American Tobacco Company, it says on there.

By Mr. Parker:

Q. Did you ever see that before?

A. No sir.

Q. Do you know anything about it?

A. No sir.

By Mr. Schwarz:

Q. Did the Crescent Cigar and Tobacco Company ever issue slips of that kind?

A. No sir.

Q. On behalf of the American Tobacco Company?

A. No sir.

GEORGE U. NELSON, witness, sworn and examined on behalf of plaintiff; testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. George U. Nelson.

Q. You have charge of the bonds filed by exporters of tobaccos, cigars and cigarettes in the Internal Revenue Department?

A. I have had, up to about three months ago.

251 Q. There is a bond, is there not, a yearly bond, given by a manufacturer who does an export business, which bond continues until revoked?

A. What is that?

Q. I say is there a yearly bond given by an exporter and filed—

A. Called an export bond.

Q. Which continues until it is cancelled or released or recalled in some way?

A. Well, they are used to protect the shipments against loss.

Q. I say does not that yearly bond continue from year to year, remain in force, until it is cancelled or recalled in some way?

A. It remains as long as the collector wants it to remain; he can recall those bonds and have new bonds whenever he wants to.

Q. And unless that is done they remain in force?

A. I believe they do.

Q. Was such a bond filed with the Internal Revenue Officer here on behalf of the American Tobacco Company?

A. Bonds are always filed by exporters; they have to furnish bond for exports.

Q. And the American Tobacco Company was an exporter?

A. They already had export bonds.

Q. Was that bond ever cancelled or released?

A. That died right away when they discontinued business at this location; it was enforced only up to the time they closed down their business.

Q. Did it, the bond, say that?

A. No sir, but that is the interpretation we have of the bond in our office.

Q. Would you mind saying what that interpretation was?

A. I just gave it to you; that is the way we interpret it; we file the bonds away in the record room; now we don't have them out; we don't use them.

252 Q. What I want to find out is whether there is any official interpretation of that kind that you are acting under; have you any ruling on that from the Department?

A. I don't know of any special ruling to that effect.

Q. Did the American Tobacco Company, in fact, ever notify your office to cancel or release its bond?

A. I rather decline to give any information of that kind; I would rather the collector instructed me; I would be giving data from the books and I cannot do that.

The Court: As a matter of law, the American Tobacco Company could not give any such instructions; they gave a bond and it stays there forever. They probably have bonds there given twenty years ago.

Q. How about the powers of attorney filed in your office by those who export; must they be filed?

A. We do not use powers of attorney.

Q. What do you use?

A. That was revoked sometime ago.

Q. Well, during 1911 and 1912 did you use powers of attorney?

A. I don't recall without referring to my books; we have not used powers of attorney for sometime.

Q. For how long?

A. I cannot recall the date.

Q. Not even approximately?

A. No sir.

Q. You don't know whether it has been more than a year or two?

A. It has been a year, I suppose two years that we have had no powers of attorney, we don't use them.

Q. Has it been over two years?

A. I cannot really exactly answer you on that.

Q. Do people sign documents for Internal Revenue matters who are not officers of the company?

253 A. They sign as agents.

Q. You say anybody can come in and sign as agent?

A. No, they sign as manager, or agent, for the exporter; I believe it is manager or agent.

Q. You mean that anybody can come in and do that, or must they have something lodged in your office to show that they have the authority?

A. I suppose they have the authority of the firm they work for.

Q. Must you not have some evidence of that authority in your office?

A. When it is asked of us by the Department we furnish it.

Q. That is not my question. I want to know whether it has been lodged with your department before you recognize the right of anybody to sign in that capacity?

A. Yes sir.

Q. Such authorities were placed with you during 1911 and 1912 by the American Tobacco Company, which was then doing an export business?

A. I don't recall, really, the dates, but whenever they were in existence we had to have some authority to accept an agent signing papers.

Q. Do you know whether those powers of attorney were ever revoked or recalled?

A. As I stated, whenever they discontinued doing business here, there was no further use for them, but we kept them on file.

Q. The question is whether you were ever notified of the revocation of the authority of the people who had filed with you the authority?

A. I don't recollect; I cannot answer that question.

Cross-examination.

By Mr. Denegre:

254 Q. You remember my calling at your office yesterday and Mr. Hynsin's referring me to you to get a memorandum of the time when the American Tobacco Company closed its factory and when the Liggett and Myers Tobacco Company opened its factory; is not that the memorandum you made for me?

A. Yes sir, that is my hand-writing.

Q. Please state what that memorandum says?

A. American Tobacco Company, No. 3; that is the cigarette factory.

By Mr. Schwarz:

Q. Is that taken from your records?

A. Yes sir.

Q. Then we ask to have the records produced that we asked for; I think we are entitled to the records just the same as counsel for the other side.

A. I am reading what I gave him from the books at Mr. Hynsin's directions.

Q. We asked you to give us some information?

A. I cannot recall, yes sir.

Q. You stated you would have to have the authority of the collector to give the information?

A. I had this authority yesterday and I am reading my writing.

The Court: Go ahead and bring a copy of the record asked for and put it in the record.

Witness (reading memorandum): Closed November 29, 1911, cigarette factory No. 3; factory No. 8, closed November 29, 1911. Liggett and Myers Tobacco Company, factory No. 3, date of bond, November 27, 1911, approved on December 4, 1911; factory No. 8, Liggett and Myers Tobacco Company, date of bond, November 27, 1911, approved December 4, 1911.

255 By Mr. Denegre:

Q. You remember looking for me as to whether or not the American Tobacco Company's name appears on your records since they closed business here?

A. Yes sir, and it did not.

Q. When a factory closes they take an inventory, do they not?

A. Yes sir, for closing.

Q. And then when a new factory is opened they take an inventory?

A. Yes sir.

Q. And then they furnish bond?

A. Yes sir.

Q. So when the American Tobacco Company closed its business here they took an inventory, and when the business was turned over to the Liggett and Myers Tobacco Company, and they took over the factory of the American Tobacco Company, it filed its bond and its inventory with you?

A. Yes sir.

Q. And then the American Tobacco Company, so far as you were concerned, went out?

A. Yes sir.

By Mr. Schwarz:

Q. Suppose the American Tobacco Company wanted to export some goods in January, 1912, was authority to export goods vested in your office in the Internal Revenue Department?

A. No sir, not for the American Tobacco Company.

Q. Will you produce the records showing the revocation of that authority?

A. No sir, I will not; I won't produce any records without the orders of the collector.

Q. We don't want the original records, we ask for a certified copy showing the revocation of the authority of the American Tobacco Company to export goods through this port during
256 January or February, 1912?

A. They have *no* made any exportations through here since they closed.

Offer.—Mr. Merrick: I offer in evidence copy of telegram dated July 16, 1912, to the Collector of Internal Revenue at New Orleans, and signed W. R. Irby, reading as follows: "Collector, Internal Revenue, New Orleans, Honorable W. Kemper: Referring to yours third instant, Black Horse Tobacco W. H. forwarded to me and referred to the owners, Matthews and Son, New York and Louisville, and find that *there* N. O. Branch was not very well organized and I have resigned as the agent and hereafter that business will be handled direct from Louisville, W. R. Irby, 10:10 p. m."

Objection.—Mr. Denegre: Objected to as not being the best evidence, no proof of his intentions to send that telegram. Objected to also as irrelevant. Mr. Irby has testified that after the first day of December, 1911, he acted for the Liggett and Myers Tobacco Company, that the Liggett and Myers Tobacco Company attended to this business for the Black Horse Warehouse Tobacco Company, and this telegram, if admitted at all, being dated July 16, 1912, will show the termination of the Liggett and Myers Tobacco Company with this business of the Black Horse Warehouse Tobacco Company, and therefore it is irrelevant and has nothing to do with the American Tobacco Company.

Mr. Merrick: As counsel has stated it is not the best evidence, we now ask for the records of the Internal Revenue Department showing that this Department has the original of this
257 telegram.

Mr. Denegre: We call attention—

The Court: I don't think the thing is irrelevant at all; that is the first proposition; and the second proposition is, you cannot have the records of the Internal Revenue Department on a mere call. They are not the defendants in this suit. There is a certain way to go about getting them. I sustain the objection.

Mr. Merrick: I reserve a bill to the ruling of the Court. Mr. Irby, who is supposed to have sent that telegram, is now in Court.

Mr. Merrick: We ask for a duces tecum on the Internal Revenue Department to produce in Court and introduce the records.

The Court: I will deny it.

Mr. Merrick: We reserve a bill to the ruling of the Court and annex to the bill a copy of the telegram.

Offer.—Mr. Schwarz: We offer in evidence a copy of the Times Democrat of Monday, October 12, 1914, on page 3 containing an advertisement of the American Tobacco Company.

Mr. Parker: We will admit that the advertisement was inserted by the American Tobacco Company by virtue of correspondence with the New York office. We do not admit that it was done by any local agent.

Offer.—Mr. Schwarz: We offer in evidence the following, the second supplemental petition in Cause 13531, entitled Peoples Tobacco Company vs. American Tobacco Company, filed August 29, 1911. We offer the service of that supplemental petition upon Mr.

258 W. R. Irby. We offer the service of that petition upon Mr. Hill, Mr. Duke and Mr. Dula. We offer the motions fixing the exceptions for trial, and we offer the judgment of the Court dismissing the supplemental petition.

Objection.—Mr. Denegre: Objected to as irrelevant.

The Court: I sustain the objection.

Mr. Merrick: I reserve a bill to the ruling of the Court, and attach to the bill the various documents and the judgment offered in evidence.

Mr. Merrick: Counsel for plaintiff requests the Court to continue the case so far as the taking of testimony is concerned in order that they shall have present Mr. Burthe, a witness who has been summoned regularly in this case for the trial, and in order to have Mr. Burthe testify concerning certain facts which plaintiff's counsel think material in this case. As to what plaintiff's — expects to prove, they state that they expect to show by the testimony of the witness that Cottam and Company had acted as the agent for the Black Horse Warehouse Tobacco Company from and after July 16, 1912, that before that time and after the first of December, 1911, and all along during the months of January, February and March, 1912, and afterwards, that Cottam and Company had acted as the agent of the British-American Tobacco Company in shipping to freight ports, cigarettes.

The Court: The Court declines to grant any continuance for the purpose of taking testimony of the witness.

Mr. Merrick: Plaintiff's counsel reserves a bill to the ruling of the Court.

259 Offer.—Mr. Schwarz: We offer in evidence Registry Receipt, No. 51839, dated February 11, 1914, and will secure and offer to be produced the letter sent to Percival S. Hill with respect to the service of this petition at that time, the letter being sent by the Clerk's office by registered mail, as per the certificate offered in evidence; a copy of the letter is likewise offered in evidence.

Mr. Denegre: We have no objection to that except it is irrelevant.

The Court: I over-rule the objection.

Offer.—Mr. Schwarz: We offer in evidence depositions of Alvin E. Hebert, Secretary of State, & Richard H. Brown, and the depositions are reserved to the time of argument and will then be passed upon by the Court.

MAX MEYERS, witness, sworn and examined on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Schwarz:

Q. What is your name?

A. Max Meyers.

Q. What is your business?

A. Cigar and tobacco retailer in New Orleans.

Q. How long have you been engaged in that business?

A. About eight years in the retail business.

Q. Did you ever get any what is called gratis or free goods when you purchased goods from the American Tobacco Company?

A. Well, I got gratis, yes sir.

260 Q. Did you handle brands of cigars or cigarettes or tobacco of the American Tobacco Company?

A. Yes sir.

Q. Since you have been — business you have handled them?

A. Yes sir.

Q. Right along?

A. Yes sir.

Q. From whom did you buy the goods, did you buy them from any salesman or representative of the American Tobacco Company at any time?

A. In what way? I have bought goods sometimes from sale-men and sometimes from jobbing houses.

Q. You have bought goods from sale-men of the American Tobacco Company?

A. They represented themselves as such, they came to the retail trade and turned their orders over to the jobbing houses.

Q. You have a slip in your hand?

A. Yes sir.

Q. Is that a slip showing one of the gratis deliveries you spoke of, free goods?

A. I don't know if it shows the gratis delivery, it is a slip showing where the salesman has given me this slip presumably in the purchasing of some goods, and they usually carry, sometimes carry around with them a package of tobacco, and they would show their delivery of goods, I presume, by this slip; I mean by that that they gave credit for goods and took a receipt.

Q. For the gratis they delivered?

A. Yes sir.

Q. And that is what this is?

A. Yes sir, I presume that is what that is; my memory does not go back before two years ago on an individual thing, but I presume that is one of those receipts they delivered showing they

261 delivered the goods to me.

Q. Gratis goods?

A. Yes sir.

Cross-examination.

By Mr. Parker:

Q. Did the American Tobacco Company's retail salesmen visit you?

A. I don't understand what you mean by visiting me?

Q. I say the representatives whom you understood to be representatives of the American Tobacco Company, and sometimes representing the Liggett and Myers Tobacco Company, and sometimes

representatives of other tobacco companies, did they visit you occasionally?

A. Retail salesmen visit all the retailers in the city, yes sir.

Q. And sometimes they take and exhibit in your store advertising matter?

A. No, I don't put any advertising matter up at all, outside of cigarettes I sell.

Q. It appears from this that some salesman gave you some free goods, isn't that what happened—gratis means free, does it not?

A. Yes sir.

Q. Can you read this, which some salesman gave you?

A. 9 5¢ tobacco packages, that is what it looks like; they gave that to me probably for a purchase; I cannot say that.

Q. And so he either gave it to you in consideration of your giving an order to him, or he gave it to you otherwise?

A. Yes sir.

Q. It says gratis?

A. Yes sir.

262 Offer.—Mr. Parker: I offer in evidence the slip testified to by the witness.

Mr. Merrick: It says gratis for the purchase of something.

Admission.—It is admitted that the slip is dated January 24, 1912, and the same is offered in evidence.

It is admitted that perique tobacco was made by the Black Horse Warehouse Tobacco Company, a corporation, the majority of whose stock was owned by the American Tobacco Company.

263

PLAINTIFF'S EXHIBIT MARKED MAYOL 1.

Filed December 19th, 1914.

New Orleans, Dec., 2, 1911. No. 44.

Whitney-Central National Bank of New Orleans, La.

Pay to the order of W. R. Irby branch American Tob. Co. \$294.71
Two hundred ninety four and 71/100 Dollars.

(Signed)

JAS. MAYOL.

[On left margin:] Jas. Mayol, 2031 Burgundy Street.

[Stamped across face:] PAID.

Reverse side of cancelled check:

The American Tobacco Co. W. R. Irby Branch. Liggett &
Myers Tobacco Co. W. R. Irby Branch. Through N. O. Clearing
House. R. T. Dec. 4, 1911. No. 1. German-American Nat'l Bank.

264

PLAINTIFF'S EXHIBIT MARKED MAYOL 2.

Filed December 19th, 1914.

New Orleans, Dec. 4, 1911. No. 46.

Whitney-Central National Bank of New Orleans, La.

Pay to the order of Liggett & Myers Tobacco Co., W. R. Irby Branch,
\$121.15/100, One hundred and Twenty one and 15/100 Dollars.

(Signed)

JAS. MAYOL.

[On left margin:] Jas. Mayol, 2031 Burgundy Street.

[Stamped across face:] PAID.

Reverse side of Cancelled Check:

The American Tobacco Co. W. R. Irby Branch. Liggett &
Myers Tobacco Co. W. R. Irby Branch. Through N. O. Clearing
House. R. T. Dec. 4, 1911. No. 1. German-American Nat'l Bank.

265 PLAINTIFF'S EXHIBIT MARKED TULLY (18 BILLS).

Filed Dec. 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8257.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan 2, 1912.

Cable Address: "Perique-New Orleans."

Sold to H. Lochte Co., Ltd.

Terms

Shipped Via

24 Ctns. Fair Play Tob. foil.....	1.65	39.60
3 " Black<> " pap.....	1.35	4.05
		<hr/>
		43.65
	5%	2.18
		<hr/>
		41.47

O. K.

SCHRACE.

Tully (1)

E.

(In green pencil.)

660

330

Entered 193

Received by Bourgeois

Price O. K'd by I. J. D.

Checked by —.

266

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8290.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan. 2, 1912.

Cable Address: "Perique-New Orleans."

Sold to H. Lochte Co., Ltd.

Terms

Shipped Via

20 Ctns. Home Run Tob. bgs.	1.35	27.00
30 " Victory " "	"	40.50
		<hr/>
		67.50
	5%	3.38
		<hr/>
		64.12

E.

(In green pencil.)

Entered 196

Received by Bourgeois

Price O. K'd by —

Checked by —

267

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15963.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.
 New Orleans, La., Jan. 2, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped Via M. R. R.

10 Ctns. Home Run Tob. bgs.....	1.35	13.50
10 " Black<> " paper	"	13.50
10 " Fair Play " foil	1.65	16.50
		<hr/>
		43.50
	5%	2.18
		<hr/>
		41.32

Charged
 1/5/12

H.

(In red pencil.)

Arcadia Cash Emporium, Ltd., Rayne, La.

T.

[Across face:] Liggett & Myers Tobacco Co.

268

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8176.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.
New Orleans, La., Jan. 3, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped Via

20	Ctns. Coupon Cigts.....	2.00	40.00
30	" King Bee Tob. bgs.....	1.35	40.50
3	" Black<> " paper	"	4.05
			<hr/>
			84.55
		5%	4.23
			<hr/>
			80.32

E.

(In green pencil.)

Entered 199

Received by Bourgeois

Price O. K.'d by —

Checked by —

[Across face:] Liggett & Myers Tobacco Co.

269

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8193.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.
New Orleans, La., Jan. 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte & Co., Ltd.

Terms:

Shipped Via

30 Ctns. King Bee Tob. bgs.	1.35	40.50
20 " Coupon Cigts.	2.00	40.00
		<hr/>
		80.50
	5%	4.03
		<hr/>
		76.47

E.

(In green pencil.)

Entered 203

Received by Burgeois

Price O. K'd by —

Checked by —

[Across face:] Liggett & Myers Tobacco Company.

270

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8423.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan'y 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms: Shipped Via (G)

3 Ctns. Blk. Eagle Tob. bgs.	1.15	3.45	
1 " Coupon Cgts.	2.00	[4.05]*	
		2.00	
		[6.05]*	5.45
5%		[30]*	.27
			[5.75]* 518

E.

(In green pencil.)

Entered 208

Received by Bourgeois

Price O. K.'d by —.

Checked by —

[Across face:] Liggett & Myers Tobacco Co.

[*Figures in brackets erased in copy.]

271

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8425.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.
New Orleans, La., Jan'y 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to H. Lochte Co., Ltd.

Terms:

Shipped Via.

5 Ctn. Coupon Cigs.	2.00	10.00
	5%	.50
		<hr/> 9.50

E.

(In green pencil.)

Entered 208

Received, Bourgeois

Price O. K'd by I. J. I. J.

Checked by —

[Across face:] Liggett & Myers Tobacco Co.

272

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8429.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan'y 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped via

20	Ctns. Coupon Cigts.	2.00	40.00
30	" King Bee Tob. bgs.	1.35	40.50
10	" Black Cat " "		13.50
			<hr/>
			94.00
			5% 4.70
			<hr/>
			89.30

E.

(In green pencil.)

Entered 208

Received by Bourgeois

Price O. K'd by I. J. I. J.

Checked by —

[Across face:] Liggett & Myers Tobacco Co.

273

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15651.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan. 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to H. Lochte Co., Ltd.

Terms:

Shipped Via Schr. Rose.

10 Ctns. Picayune Cigts.	2.00	20.00	
30 " King Bee Tob. bgs.	1.35	40.50	
		<hr/>	
		60.50	
	5%	3.03	
		<hr/>	57.47

H.

(In red pencil.)

Houlton Johnston Lbr. Co., Houltonville, La.

109.70

[Across face:] Liggett & Myers Tobacco Co.

274

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15664.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan. 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped Via I. C.

20 Ctns. Picayune Cigts.	2.00	40.00	
	5%	2.00	
		<hr/>	38.00

H.

(In red pencil.)

Robt. Hector, Yazoo City, Miss.

109 19

[Across face:] Liggett & Myers Tobacco Co.

275

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15665.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan. 5, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped Via L. & N.

30 Ctns. King Bee Tob. bgs.....	1.35	40.50	
	5%	2.03	
			38.49

H.

(In red pencil.)

W. H. Nelson, Moss Point, Miss.

[Across face:] Liggett & Myers Tobacco Co.

276 PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 8468.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan. 8, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms: Shipped Via

20 Ctns. Picayune Cigts.	2.00	40.00
30# Irby's Va. X Tob. 5¢ foil. ....	.66	19.80
15# Es. " " " 5¢ bgs. ....	.64	9.60
		<hr/>
		69.40
	5%	3.47
		<hr/>
		65.93

E.

(In green pencil.)

Entered 214

Received by Bourgeois

Price O. K.'d by I. J. I. J.

Checked by —

1980

[Across face:] Liggett & Myers Tobacco Co.

277

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.

All prices subject to change without notice.

No. 15414.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 9, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped Via M. R. R.

20 Ctns. Black < > Tob. paper.....	1.35	27.00
5 " King Bee " bgs.	"	6.75
10 " Black Prince "	"	13.50
3 " " paper.....	"	4.05
5 # Irby's Va. X Tob. 5c bgs.....	.64	3.20
5 Ctns. Fair Play Tob. foil.....	1.65	8.25
		<hr/>
		62.75
	5%	3.14
		<hr/>
		59.61

H.

(In red pencil.)

Levy & Sommer, Rayne, La.

[Across face:] Liggett & Myers Tobacco Co.

278

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 8357.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 11, 1912.

Cable Address: "Perique-New Orleans."

W. L.

Sold to Hy Lochte Co., Ltd.

Terms: Shipped Via

30 Ctns. King Bee Tob. bgs.....	1.35	40.50	
	5%	2.03	
		<hr/>	38.47

E.

(In green pencil.)

Entered 221

Received by Bourgeois

Price O. K'd by I. J. I. J.

Checked by —

279

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8378.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

W. L.

New Orleans, La., Jan. 11, 1912.

Cable Address: "Perique-New Orleans."

Sold to H. Lochte & Co., Ltd.

Terms: Shipped Via

30 Ctns. King Bee Tob. bgs.	1.35	40.50	
4 " Blk. Eagle " "	1.15	4.60	
		<hr/>	
		45.10	
	5%	2.26	
		<hr/>	42.84

E.

(In green pencil.)

Entered 224

Received by Bourgeois

Price O. K.'d by I. J. I. J.

Checked by —

[Across face:] Liggett & Myers Tobacco Co.

280

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 A- prices subject to change without notice.

No. 8390.

W. R. Irby Branch of The American Tobacco Company,
 400-414 South Peters Street,

New Orleans, La., Jan. 13, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

(L.)

Terms:

Shipped Via

5 Ctns. Coupon Cigts.	2.00	50.00	
10 " King Bee Tob. bgs.	1.35	40.50	6 90
5# King Bee " 16 oz. tins .46¢		6.90	
		<hr/> 97.40	
	5%	4.87	
		<hr/> 92.53	

E.

(In green pencil.)

Entered 226

Received by Bourgeois

Price O. K'd by I. J. I. J.

Checked by —

[Across face:] Liggett & Myers Tobacco Co.

281

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 A- prices subject to change without notice.

No. 8527.

W. R. Irby Branch of The American Tobacco Company,
 400-414 South Peters Street,

New Orleans, La., Jan. 15, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

Terms:

Shipped Via

(S.)

3 Ctns. Black Prince Tob. bgs.....	1.35	4.05	
30 " King Bee " "	"	40.50	
		<hr/>	
		44.55	
	5%	2.23	
		<hr/>	42.32

E.

(In green pencil.)

Entered 231

Received by Bourgeois

Price O. K'd by —

Checked by —

F./T.

[Across face:] Liggett & Myers Tobacco Co.

282

PLAINTIFF'S EXHIBIT MARKED TULLY.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 15741.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 15, 1912.

Cable Address: "Perique-New Orleans."

Sold to Hy Lochte Co., Ltd.

W. L.

Terms:

Shipped Via Paul.

24 Ctns. King Bee Tob. bgs.	1.35	32.40
	5%	1.62
		<hr/> 30.78

H. 12/28/1.
(In red pencil.)

540

270

3240

F. Sylve

F.
City Price
La.

[Across face:] Liggett & Myers Tobacco Co.

EXHIBIT "DUVIC No. 1."

Filed December 19th, 1914.

New Orleans, Nov. 3, 1911. No. 25903.

German-American National Bank	\$1589.35
of New Orleans, La.	

Pay to the order of W. R. Irby Branch of American Tobacco Co.,
Fifteen hundred eighty nine 35/100 Dollars.

(Signed) NICHOLAS BURKE COMPANY, LIMITED,
WM. P. BURKE, *President or Vice-President.*
(Paid 11-4-11)

[On left margin:] Nicholas Burke Company, Limited, 409, 411,
413, 415 & 417 Magazine Street.

Stamped on face of check with Rubber Stamp: "German-American National Bank, New Orleans, La., Nov. 4, 1911, No. 2, Receiving Teller," also "Examined by Paying Teller."

The American Tobacco Co. W. R. Irby Branch. Reverse side of cancelled check.

284

EXHIBIT DUVIC No. 2.

Filed December 19th, 1914.

New Orleans, Dec. 19, 199-. No. 26630.

German-American National Bank \$1557.76
of New Orleans, La.Pay to the order of W. R. Irby Branch of Am. Tobacco Co. Fifteen
hundred fifty seven 76/100 Dollars.

NICHOLAS BURKE COMPANY, LIMITED.

(Signed) WM. P. BURKE, *President or Vice-President.*

(Paid 12-20-11.)

[On left margin:] Nicholas Burke Company, Limited, 409, 411,
413, 415 & 417 Magazine St.

[On right margin:] Not over sixteen hundred \$1600.

Stamped on face of check with Rubber Stamp: "German-American
National Bank, New Orleans, La., Dec. 20, 1911. No. 1 Receiving
Teller," also "Examined by Paying Teller."The American Tobacco Co. W. R. Irby Branch Liggett & Myers
Tobacco Co. W. R. Irby Branch. Rever side of above check.

285 PLAINTIFF'S EXHIBITS MARKED DUVIC 3 (BILLS).

Filed Dec. 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15890.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 16, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via M. R. R.

Dec. 16, 1911.

25 Ctns. Picayune Tob. bgs.....	1.35	Charged	
	5%	33.75	
		1.69	
		—	32.00
	Less 2		.64
			<hr/> 31.42

O. K.

P. L. KEAGHEY.

Southdown Store, Southdown, La.

Omit-ed on Drop shipment 16133.

675	
270	
<hr/> 3375	3206
5	
<hr/> 16875	

[Across face:] Liggett & Myers Tobacco Co.

286

PLAINTIFF'S EXHIBIT MARKED DUVIC #3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 15897.

W. R. Irby Branch of The American Tobacco Company,
400-414 South Peters Street,
New Orleans, La., Dec. 16, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via T. & P. Dec. 16, 1911.

		Charged
22 Ctns. Red X Tob. foil.....	1.65	36.30
3 " Black Prince Tob. bgs.....	1.35	4.05
5# Es. V. a X " " 5¢ .....	.64	3.20
		<hr/>
		43.55
	5%	2.18
		<hr/>
		41.37
	Less 2	.83
		<hr/>
		40.54

O. K.

P. L. KEAGHEY.

L. A. MOREAU,

Marksville, La.

8274

330

330 137

3630 05

[Across face:] Liggett & Myers Tobacco Co.

287 PLAINTIFF'S EXHIBIT MARKED DUVIC #3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 16135.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 18, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via St. James

Dec. 18, 1911.

		Charged	
12 Ctns. Red X Tob. foil.....	1.65	19.80	
10 " Home Run Tob. bgs.....	1.35	13.50	
5# Es. Va. X Tob. 5¢ bgs.....	.64	3.20	
		<hr/>	
		36.50	
	5%	1.83	
		<hr/>	34.67
	Less 2		.70
			<hr/>
			33.97

O. K.

P. L. KEAGHEY.

McCall Bros. P. & M. Co., Evan Hall Store.

3.30

16 5

19 80

320

1250

6934

3467

[Across face:] Liggett & Myers Tobacco Co.

288 PLAINTIFF'S EXHIBIT MARKED DUVIC #3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15914.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 19, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via M. R. R.

Dec. 19, 1911.

		Charged	
20 Ctns. Red X Tob. foil.....	1.65	33.00	
8 " King Bee Tob. bgs.....	1.35	10.80	
4#Es. Vex. " 5¢ foil		2.64	
		46.44	
	5%	2.32	
		<hr/>	44.12
	Less 2		.88
			<hr/>
			42.24

O. K.

P. L. KEAGHEY.

Joe Washington, Patterson, La.

3300

10.80

2.64

4644+4.12

233.20

[Across face:] Liggett & Myers Tobacco Co.

289

PLAINTIFF'S EXHIBIT MARKED DUVIC #3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 8034.

W. R. Irby Branch of The American Tobacco Company,
 400-414 South Peters Street,

New Orleans, La., Dec. 20, 1911.

Cable Address: "Perique-New Orleans."

Sold to N. Burke Co., Ltd.

Terms:

Shipper Via W. B. B.

30 Ctns. King Bee Tob. bgs.....	1.35	40.50
	5%	2.03
		— 38.47
	Less 2	.77
		<hr/> 37.70

Date Received 12/20/11.

Folio 269

O. K. Receiving Clerk W. H.

O. K. for Payment

4050

5

20250

3847

7694

290 PLAINTIFF'S EXHIBIT MARKED DUVIC # 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 7782.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 21, 1911.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via W. B. B.

50# Irby's Va. X Tob. 5¢ foil.....	.66	33.00
25 " Irby's " " " 5¢ bgs. ....	.64	16.00
25 Ctns. Victory "	1.35	33.75
		<hr/> 82.75
	5%	4.14
		<hr/> 78.61
	Less 2	1.57
		<hr/> 77.04

Date Received 12/21/11.

Folio 274

O. K. Receiving Clerk W. H.

O. K. for Payment.

	33.00	
157 22	7861	
		8275
675		5
270		<hr/> 41375
<hr/> 3375		

291 PLAINTIFF'S EXHIBIT MARKED DUVIC #3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
 All prices subject to change without notice.

No. 15933.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 21, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via Houma.

Dec. 21, 1911.

		Charged
30 Ctns. Home Run Tob. bgs.....	1.35	40.50
10 " King Bee "	"	13.50
4 " Red X " foil	1.65	6.60
5# Es. Vax. " 5¢ bgs. ....	.64	3.20
		<hr/>
		63.80
	5%	3.19
		<hr/>
	Less 2	60.61
		<hr/>
		1.21
		<hr/>
		59.40

O. K.

P. L. KEAGHEY.

Point Farm Store

Their

40.50
 3,1900 6.60
 60.61
 3.20
 12122†

63.80

[Across face:] Liggett & Myers Tobacco Co.

292

PLAINTIFF'S EXHIBIT MARKED DUVIC 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 16177.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 22, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via N. O. T. & M.

Dec. 22, 1911.

		Charges
10 Ctns. Home Run Tob. bgs.	1.35	13.50
8# Irby's Va. X Tob. 5¢ foil. ....	.66	5.28
6 Ctns. Black<>Tob. paper.	1.35	8.10
8 " " Eagle Tob. bgs.	1.15	9.20
2 " " King Bee " "	1.35	2.70
		<hr/>
		38.78
	5%	1.94
		<hr/>
	Less 2	36.84
		<hr/>
		.74
		<hr/>
		36.19

O. K.

P. L. KEAGHEY.

J. A. Guidroz, Arnaudville, La.

810

900

7368

19390

36.84

[Across face:] Liggett & Myers Tobacco Co.

293

PLAINTIFF'S EXHIBIT MARKED DUVIC 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.

All prices subject to change without notice.

No. 16194.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 22, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via Gem.

Dec. 22, 1911.

		Charged
6 Ctns. Red X Tob. foil.....	1.65	9.90
20 " King Bee Tob. bag.....	1.35	27.00
		<hr/>
		36.90
	5%	1.85
		<hr/>
		35.05
	Less 2	.70
		<hr/>
		34.35

O. K.

P. L. KEAGHEY.

The St. Joseph P. & M. Co., St. Joseph Plant.

990

2700

18450

35.05

[Across face:] Liggett & Myers Tobacco Co.

294

PLAINTIFF'S EXHIBIT MARKED DUVIC 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8098.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 26, 1911.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.

Terms:

Shipped Via W. B. B.

30 Ctns. Picayune Cigts.....	2.00	60.00	
	5%	3.00	
		<hr/>	57.00
	Less 2		1.14
			<hr/>
			55.86

Date Received 12/26/11.

Folio 280

O. K. Receiving Clerk W. H.

O. K. for Payment.

295

PLAINTIFF'S EXHIBIT MARKED DUVIC 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.

All prices subject to change without notice.

No. 8106.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 26, 1911.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.

Terms: Shipped Via W. B. B.

6 Ctns. Black Prince Tob. bgs.	1.35	8.10
6 " " Cat " "	"	8.10
25 " King Bee " "	"	33.75
		<hr/>
	5%	49.95
		2.50
		<hr/>
	Less 2	47.45
		.95
		<hr/>
		46.50

Date Received 2/26/11.

Folio 281

O. K. Receiving Clerk W. H.

O. K. for Payment

775	
270	4775
<hr/>	
3475	4975

[Across face:] Liggett & Myers Tobacco Co.

296

PLAINTIFF'S EXHIBIT MARKED DUVIC 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 15611.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Dec. 26, 1911.

Cable Address: "Perique-New Orleans."

W. B. B.

1.35

Sold to Nic Burke Co., Ltd.

Terms.

Shipped Via Menge.

Dec. 27, 1911.

30 Ctns. King Bee Tob. bgs. 1.35
5%

Charged

40.50

2.03

38.47

Less 2

.77

37.70

O. K.

P. L. KEAGHEY.

J. W. Poche & Bro., Pleasant Green W. H.

4050

7894

[Across face:] Liggett — Myers Tobacco Co.

297 PLAINTIFF'S EXHIBIT MARKED DUVIC 3.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8223.

W. R. Irby Branch of The American Tobacco Company,
400-414 South Peters Street,

New Orleans, La., Dec. 29, 1911.

Cable Address: "Perique-New Orleans."

Sold to N. Burke Co., Ltd.

W. B. B.

Terms: Shipped Via

25 Ctas. Coupons Cigttts.....	2.00	50.00	
	5%	2.50	
			47.50
	Less 2		.94
			<hr/> 46.56

Date Received 12/28/11.

Folio 286

O. K. Receiving Clerk W. H.

O. K. for Payment

9500

298 PLAINTIFF'S EXHIBITS MARKED DUVIC 4 (BILLS).

Filed Dec. 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8399.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 16, 1912.

Cable Address: "Perique-New Orleans."

Sold to N. Burke Co., Ltd.

W. B. B.

Terms:

Shipped Via

25 Ctns. Coupon Cigts.....	2.00	50.00	
20 " Picayune "	"	40.00	
5 " King Bee "	"	10.00	
		<hr/>	
		100.00	
	5%	5.00	
		<hr/>	95.00
	Less 2		1.90
			<hr/>
			93.10

Date Received 1/15/12.

Folio 29

O. K. Receiving Clerk W. H.

O. K. for Payment.

[Across face:] (Stamped: Liggett & Myers Tobacco Co.)

299)

PLAINTIFF'S EXHIBIT MARKED DUVIC 4.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8603.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 16, 1912.

Cable Address: "Perique-New Orleans."

Sold to N. Burke Co., Ltd.

W. B. B.

Terms:

Shipped Via

5 Ctns. Home Run Cigts.....	2.00	10.00	
	5%	.50	
			9.50
	Less 2%		.19
			<hr/> 9.31

Date Received 1/15/12.

Folio 29

O. K. Receiving Clerk W. H.

O. K. for Payment

1900

300

PLAINTIFF'S EXHIBIT MARKED DUVIC 4.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8567.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 17, 1912.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.

Terms: W. B. B.
Shipped Via

1 Ctn. Black Eagle Tob. Bgs.....	1.15	1.15
10 " Home Run "	1.35	13.50
10# Es. Vax " 5¢ " .....	.64	6.40
10# Irby's Vax " 5¢ " .....	.64	6.40
40# " " " 5¢ foil .....	.66	26.40
10 Ctns. King Bee " bgs.	1.35	13.50
		<hr/>
		67.35
	5%	3.37
		<hr/>
		63.98
	Less 2	1.28
		<hr/>
		62.70

Date Received 1/17/12.

Folio 35

O. K. Receiving Clerk W. H.

O. K. for Payment.

26.40

33675

12 796

6398

[Across face:] Liggett & Myers Tobacco Co.

301

PLAINTIFF'S EXHIBIT MARKED DUVIC 4.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8626.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 18, 1912.

Cable Address: "Perique-New Orleans."

W. B. B.

Sold to Nic Burke & Co., Ltd.

Terms: Shipped Via

1 Ctn.	Black<>Tob.	paper.....	1.35	1.35
20 "	King Bee	" bgs.	"	27.00
12 "	Fair Play	" foil	1.65	19.80
				<hr/>
				48.15
				5%
				2.41
				<hr/>
				45.74
				Less 2
				.91
				<hr/>
				44.83

Date Received 1/17/12.

Folio 34

O. K. Receiving Clerk W. H.

O. K. for Payment.

	27.00			
91.48		330		
		65		
		<hr/>		
		980	4815	
			40.75	45.74

[Across face:] Liggett & Myers Tobacco Co.

302

PLAINTIFF'S EXHIBIT MARKED DUVIC 4.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 8644.

W. R. Irby Branch of The American Tobacco Company,

400-414 South Peters Street,

New Orleans, La., Jan. 18, 1912.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.

W. B. B.

Terms:

Shipped Vis

20 Ctn. Home Run Cigts.....	2.00	40.00	
15 " Picayune "	"	30.00	
		<hr/>	
		70.00	
	5%	3.50	
		<hr/>	66.50
	Less 2		1.33
			<hr/>
			65.17

Date Received 1/18/12.

Folio 37

O. K. Receiving Clerk W. H.

O. K. for Payment.

350

13300

[Across face:] Liggett & Myers Tobacco Co.

303

PLAINTIFF'S EXHIBIT MARKED DUVIC 4.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 15463.

W. R. Irby Branch of The American Tobacco Company,
400-414 South Peters Street,

New Orleans, La., Jan. 18, 1912.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.

W. B. B.

Terms: Shipped Via Houma. Charged Jan. 19, 1912.

15 Ctns. King Bee Tob. bgs.....	1.35	20.25
8 " Home Run " "	"	10.80
3 " Picayune " "	"	4.05
5# E. Va. X " 5¢ .....	.64	3.20
		<hr/>
		38.30
	5%	1.92
		<hr/>
	Less 2	36.38
		.73
		<hr/>
		35.65

Point Farm Store
Their Ldg.

Stamped on face of bill: O. K., P. L. Keagrey.

[Across face:] Liggett & Myers Tobacco Co.

304

PLAINTIFF'S EXHIBIT MARKED DUPLIC 4.

Filed December 19th, 1914.

No Insurance on Goods Unless so Ordered.
All prices subject to change without notice.

No. 15769.

W. R. Irby Branch of The American Tobacco Company,
400-414 South Peters Street,
New Orleans, La., Jan. 19, 1912.

Cable Address: "Perique-New Orleans."

Sold to Nic Burke Co., Ltd.
W. B. B.

Terms: Shipped Via M. R. R.

24 Ctns. Home Run Tob. bgs.	1.35	32.40
6 " Picayune " "	"	8.10
2 " King Bee " "	"	2.70
12# Irby's Vax " 5¢ bgs. ....	.64	7.68
		<hr/> 50.88
	5%	2.54
		<hr/> 48.34
	Less 2	.97
		<hr/> 47.37

O. K., P. L. Keagrey.

Southdown Store
Southdown, La.

Stamped on face of bill: O. K., P. L. Keaghey.

[Across face:] Liggett & Myers Tobacco Co.

305

COBB EXHIBIT No. 1.

Filed December 19th, 1914.

Hernsheim Company, Limited.

Office of the President.

New Orleans, U. S. A., Dec. 19, 1914.

The Hernsheim Co., Ltd., rents the Blackhorse Warehouse building, in which is stored Perique Tobacco for account of the British Am. Tobacco, from the Havana American Co., on a verbal agreement to pay so much per month. We have no lease or written agreement.

(Signed)

H. W. COBB, *President*.

306

PLAINTIFF'S EXHIBIT MARKED HYNSON 1.

Filed December 19th, 1914.

Regulations No. 8, Revised July 1, 1910: United States Internal Revenue.

Regulations Established Concerning Tax on Tobacco, Snuff, Cigars and Cigarettes and Purchase and Sale of Leaf Tobacco, under the Revised Statutes of the United States and Subsequent Acts, July 1, 1910.

Seal of Commissioner of Internal Revenue.

Washington, Government Printing Office, 1910.

307 *Regulations and Instructions Concerning the Manufacture and Sale of Taxable Tobacco Products.*

Chapter I.

Registry and Bonds.

Section 26 of the act approved October 1, 1890, provides that every dealer in leaf tobacco, manufacturer, and peddler shall register with the collector of the district his name, or style, place of residence, trade or business, and the place where such trade or business is to be carried on, and a failure to register as required shall subject such person to a penalty of \$50.

Section 35 of the act approved August 5, 1909, provides that every retail dealer in leaf tobacco shall register with the collector of the district his name or style, place of business, trade or business, and the place where such trade or business is to be carried on; and a failure to register as required shall subject such person to a penalty of \$50.

Every person who engages in business as peddler of tobacco, dealer in leaf tobacco, retail dealer in leaf tobacco, or as a manufacturer of tobacco or cigars, is required to make return for registry, on Form 277, to the collector of his district on commencing business, and annually thereafter, on the 1st day of July of each year.

The return for the registry must be made to the collector or deputy collector within the calendar month in which registry is required, and failure to so register should be reported to the Commissioner of Internal Revenue, and the United States district attorney, with the collector's recommendation. (T. D. 1612, April 4, 1910.)

* * * * *

5. In the case of a corporation it must be recited in the bond that the corporation was duly organized under the laws of a State. The

bond must be accompanied with a copy of the charter or articles of incorporation and be signed with the corporate name and with the name and title of the officer duly authorized by the by-laws, or by resolutions adopted at some meeting of the company or directors, to sign for the company, a certified copy of which by-laws or resolutions should accompany the bond. The signature of the person signing for the company shall be authenticated by the corporate seal.

Where a bond is given with individual sureties the signatures of the principal and the sureties must be attested by two witnesses who can sign their names in the script of the English language.

Where a bond is given by a person or a firm with corporate surety, the signatures of the principals must be attested in like manner.

* * * * *

9. All bonds accepted by a collector in which alterations and erasures occur should have placed upon them the statement by the affidavit of an officer of a surety company, or of the personal sureties thereto, that such alterations or erasures were made prior to the signing of the bond; or, if such alterations or erasures were made after the bond was signed, the formal consent of all the parties thereto should be written in the bond.

Special attention should be given all bonds, to the end that they shall be in as perfect form as possible, in order that no question may arise concerning them should they be placed in
309 suit. (T. D. 1000, April 26, 1906.)

* * * * *

12. Collectors will as often as once a year reexamine the bonds and assure themselves of the continued responsibility of the sureties and indorse the date of examination on the back of each bond.

Branch Leaf-tobacco Warehouses.

Dealers in leaf tobacco who may establish branch warehouses for the receipt, storage, and shipment of leaf tobacco must register and keep Record 59 at at least one warehouse or main place of business in each district in which such business is carried on. Each registered dealer will be required to confine his entries in Record 59 to transactions taking place from the several branch warehouses included in such registration.

Sales and shipments of leaf tobacco to himself as a dealer in leaf tobacco in other districts and to other dealers or manufacturers in other districts must be reported on Record 59 in the district in which such branch warehouses are registered and accounted for by the leaf dealer or manufacturer to whom the tobacco is sold, shipped, or transferred.

* * * * *

Incorporated Companies.

Corporations carrying on business as manufacturers of tobacco, snuff, cigars, or cigarettes under statutes which require returns to be

signed by the manufacturer and verified by his own oath will be required to have their returns made by an officer of the corporation who is authorised so to do either by the charter, by the articles of incorporation, or by by-laws regularly adopted.

The delegation of the authority to make sworn returns to an attorney in fact is not permissible unless the person holding such power of attorney is a duly elected and authorized officer of the corporation and signs as such instead of under his authority granted by power of attorney.

Under the law relating to corporations, certain officers are empowered to bind the corporation in various ways. The sections of the statute relating to the returns of tobacco, snuff, cigar, and cigarette manufacturers contemplate that these returns be made by some person who has the power under the authority resting in an officer of the corporation to bind that corporation.

The duty imposed by the law upon the manufacturer of verifying returns is a duty which can not be delegated by power of attorney, but must be performed by one who is himself responsible and who can make his corporation responsible by reason of the position he holds in that corporation.

311 *Copy of Night Letter from W. R. Irby to Hon. W. Kemper, Collector of Internal Revenue, Dated Lynchburg, Va., July 16, 1912.*

Filed December 19th, 1914.

Night Letter.

LYNCHBURG, VA., July 16, '12.

Hon. W. Kemper, Collector Int. Rev., New Orleans:

Referring to yours Third inst., to Black Horse Tob. W. H — Forwarded to me I referred it to the owners Mathews & Sons N. Y. and Louisville and found that their N. O. Branch was not very well organized and I have resigned as their agent. Hereafter that business will be handled direct from Louisville.

10:10 P. M.

W. R. IRBY.

Rec. July 16th, 1912.

W. Y. KEMPER.

Copy.

312 *Copy of Advertisement of American Tobacco Company in New Orleans Times-Democrat of October 12th, 1914. Offered by Plaintiff.*

Filed December 19th, 1914.

We will buy a pound of cotton for every pound of Tobacco we sell.

We realize with all the residents of the South the present financial stringency due to the cotton situation. We realize that the South must sell its Cotton, and we will help in the most practicable way we know—by buying cotton.

For every pound purchased of all these famous brands of tobacco and cigarettes (counting 1000 cigarettes equal to five pounds of tobacco) we will buy from our dealers a pound of cotton at 10c., in accordance with our circular to dealers dated Sept. 28.

We have faith in cotton. We know that when the war clouds roll away, the demand of the manufacturers for cotton throughout the world will be greater than ever before, and the South will enjoy unprecedented prosperity.

RED J TOBACCO.

The man who chews Red J gets absolutely the best 10-cent plug tobacco of this character in the world. Made of gold and mellowed leaf — a tough and lasting chew.

TUXEDO

The perfect tobacco for pipe and cigarette.

Tuxedo is recognized as America's favorite pipe tobacco—smoked and endorsed by thousands of famous Americans. The exclusive "Tuxedo Process" of making the finest Kentucky Burley leaf deliciously mild and non-biting has never been successfully imitated.

PENN'S Thick Natural Leaf Tobacco.

Penn's is guaranteed to be the best natural leaf tobacco made—sweet, mellow, and satisfying. Any dissatisfied customer can return it to any merchant, whom we hereby authorize to return his money.

Genuine "BULL" Durham Smoking Tobacco.

Millions of men who roll their own cigarettes use this world-famed tobacco. There is no other like it—none with such a wonderful unique aroma and mellow fresh fragrance.

SOVEREIGN CIGARETTES.

Sovereign is the enthusiastic choice of the South in manufactured cigarettes. That wonderful flavor of Southern-grown, Old-Belt tobacco is the taste that Southern Smokers love—"Quality Tells."

Remember, when you purchase any of the above brands, you not only get the greatest value for your money, but every pound purchased by you creates the sale of a pound of cotton.

THE AMERICAN TOBACCO COMPANY.

313 *Second Supplemental and Amended Petition in Cause No. 13531, Entitled People's Tobacco Company vs. American Tobacco Company. Filed August 29th, 1911, in the Late U. S. Circuit Court, Eastern District of Louisiana. Offered by Plaintiff.*

Second Supplemental Petition. Filed August 29, 1911.

United States Circuit Court, Eastern Dist. of Louisiana.

No. 13531.

PEOPLE'S TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY et als.

To the Honorable the United States Circuit Court in and for the Eastern District of Louisiana:

This second supplemental and amended petition of the People's Tobacco Company, Limited, plaintiff herein, filed with leave of Court first had and obtained, respectfully represents:

That petitioner reiterates all and singular each and every allegation contained in the original and supplemental petitions and the exhibit made part thereof filed in this Court, and petitioner further alleges as follows, to-wit:

1st. That the defendant, the American Tobacco Company and others, for the purpose of injuring and to the injury of petitioner as hereinbefore set out in the pleadings and in the exhibits heretofore filed, restrained and monopolized and attempted to restrain and monopolize and conspired to restrain and monopolize the interstate commerce in tobacco, in its raw and finished product, and the articles necessary to its manufacture, all against and in violation of the statute of the United States known as the "Sherman Anti-Trust Law."

2nd. That since the filing of the original and supplemental petitions in this cause, the suit of the United States vs. American Tobacco Company and others, No. 660 and 661 of the Supreme Court of the United States, which was then pending, has been decided by the said Supreme Court of the United States, and the defendants, the American Tobacco Company and other defendant companies named, as well as certain individuals, such as James B. Duke, president of the American Tobacco Company; Percival S. Hill, vice-president of the American Tobacco Company, and Caleb C. Dula, vice-president of the American Tobacco Company, and other individuals, have all,

314 by said Supreme Court of the United States, been found guilty of violating the laws of the United States and particularly the law known as the "Sherman Anti-Trust Act," in that they have formed and maintained conspiracies in unreasonable restraint of trade in tobacco and its products in violation of the first section of said Act, and have monopolized and attempted to monopolize interstate and foreign trade therein violation of the second section of said

Act; and the said illegal combinations, conspiracies and monopolies have been ordered by the said Supreme Court of the United States, discontinued, and by a decree of the said Court the defendant, the American Tobacco Company, has been ordered dissolved in due course.

3rd. That the Supreme Court of the United States found, as a fact, and petitioner charges as facts, the following:

That the history of the combination is replete with the doing of acts prohibited by law and showing a purpose to acquire dominion and control of the tobacco trade, not by the mere exertion of the ordinary right to contract and to trade, but by methods devised in order to monopolize the trade by driving competitors out of business.

That the very first organization or combination was impelled by a previously existing fierce trade war inspired by one or more of the minds which brought about and became parties to that combination.

That immediately after that combination and the increase of capital which followed, the power of the combination was used as a vantage ground to further monopolize the trade in tobacco by means of trade conflicts designed to injure others, either by driving competitors out of the business or compelling them to become parties to a combination as shown by the absorption of companies engaged in manufacturing plug, licorice and snuff, as more specifically herein-after detailed.

That the unlawful purpose was evidenced by the organization of a new company, or the control exerted by the taking of stock in one or another or in several, so as to obscure the result actually attained, nevertheless, uniform in their manifestations of the purpose to restrain others and to monopolize and restrain power in the hands of the few who, from the beginning, contemplated the mastery of the trade.

That there was a perpetual expenditure of millions upon 315 millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade.

That there were constantly recurring stipulations by which numbers of persons, whether manufacturers, *manufacturers* or employees, were required to bind themselves, generally for long periods, not to compete in the future.

4th. That this plan scheme, conspiracy and attempt to restrain and monopolize the interstate business in tobacco and its products as found by the Supreme Court of the United States, came about substantially as follows, to-wit:

Prior to the year 1890—as is found as a fact by the Supreme Court—"tobacco was grown in many sections of the country having diversity of soil and climate, and, therefore, was subject to various vicissitudes resulting from the places of production, and consequently varied in quality. The great diversity of use to which tobacco was applied in manufacturing, caused it to be that there was a demand for all the various qualities. The demand for all qualities was not local, but widespread, extending as well to domestic as to foreign trade, and, therefore, all the products were marketed under com-

petitive conditions of a peculiarly advantageous nature. The manufacture of the product in this country in various forms was successfully carried on by many individuals or concerns scattered throughout the country, a large number, perhaps, being in the vicinage of production and others being advantageously situated in or near the principal markets of distribution."

In January, 1890, the leading and most important tobacco manufacturers in the United States and the leading users of leaf tobacco in the United States, were Allen & Ginter, located at Richmond, Va.; W. Duke Sons & Co., a North Carolina corporation, located at Durham, N. C., and at the City of New York; Kinney Tobacco Company, a New York corporation, located at the City of New York; W. S. Kimball, partnership, located at Rochester, New York, and Goodwin & Company, located at Brooklyn, New York, all competing companies.

In said year these companies were merged into or surrendered all assets to a new company formed and known as the American Tobacco Company. The object of the formation of the said company was to restrain and monopolize interstate trade in tobacco and its products.

5th. Thereafter, and for the purpose of further carrying out its desire to control and monopolize the industry, trade and commerce in tobacco and its manufacture, the said American Tobacco Company and its allied companies drove out of business or acquired numerous companies all of said companies being engaged in interstate business in the purchase, manufacture or sale of tobacco and its products, and in each instance those selling or forced to sell to the American Tobacco Company, agreed for a given period not to engage or become interested in the business of manufacturing, selling or distributing tobacco or its products throughout the United States; that among such companies were the following and each and every one of the plants of said companies was closed and abandoned after being acquired by this defendant:

In April, 1891, The G. W. Gail & Ax, a partnership of Baltimore, Md.; cash, \$77,582.66. Preferred stock, \$705,000; common stock, \$1,055,000.

In May, 1892, S. Hershheim Bros. & Co., New Orleans, La. Cash, \$269,961.33; preferred stock, \$100,000; common stock, \$150,000.

In February, 1895, the Consolidated Cigarette Company of New York. Cash, \$288,485.34.

In April, 1895, the H. W. Meyer Tobacco Mfg. Co. of New York. Cash, \$351,915.78.

In March, 1895, Thomas H. Hall, of New York. Cash \$549,165.48.

In October, 1895, the James G. Butler Tobacco Company of St. Louis, Mo. Cash, \$2,919.11; preferred stock, \$192,000; common stock, \$273,000.

In May, 1896, A. H. Motley Co., Reidsville, N. C. Cash, \$24,000.

In November, 1897, the American Eagle Tobacco Company of Detroit, Mich. Cash, \$60,000.

In July, 1898, the Herman Mandelbaum, New York City. Cash, \$26,000.

In October, 1898, the Drummond Tobacco, Co. of St. Louis. Cash, \$3,457,500.

317 6th. That the business of the said American Tobacco Company (then the old American Tobacco Company) had grown so large and complex as to make it necessary, in 1898, to form another company, to-wit, the Continental Tobacco Company, for the purpose of engaging in and controlling inter-state and foreign business in the manufacture, sale and distribution of plug tobacco and of taking over that branch of the business of the American Tobacco Company.

That prior to the period of the organization of the Continental Tobacco Company the following were the largest and most powerful companies in the United States engaged in the manufacture, sale and distribution of plug tobacco and competing with the defendant, the American Tobacco Company, to-wit, the P. Lorillard Co., located at Middletown, O.; Liggett & Myers Tobacco Company, at St. Louis, Mo.; John Finzer & Bros., at Louisville, Ky.; J. Wright Company and P. H. Mayo & Bros., both at Richmond, Va., and Daniel Schotten & Co. of Detroit, Mich.

That the said Continental Tobacco Company, with a capital stock of \$100,000,000.00, took over, after its organization, from the American Tobacco Company its plug business, and received a conveyance of all the business, plants, assets, good will, etc., of the foregoing various companies, competitors of the American Tobacco Company in the manufacture, sale and distribution of plug tobacco, together with the covenant heretofore mentioned that the vendors were not to engage in the plug tobacco business in competition with the vendee.

In addition to the foregoing, the following companies or controlling interests therein have been taken over by the defendants in furtherance of their general scheme and plan to control the plug tobacco trade, to-wit:

- (Feb., 1899) The Monopol Tobacco Works, New York, \$250,000;
- (March, 1899) The Luhrman Tob. Wks., Cincinnati, O., 918,000;
- (July, 1899) Rucabado y Portela, San Juan, P. R., 585,300;
- (1899) R. J. Reynolds Tob. Co., Winston-Salem, N. C.
Preferred stock, \$5,000,000; common stock, \$7,525,000.
- 318 (March, 1899) Blackwell's Durham Tob. Co., Durham, N. C., \$4,000,000;
- (1902) Reynolds Tob. Co., Bristol, Tenn.
- (1903) F. R. Penn Tob. Co., Reidsville, N. C.
- (1903) Wells-Whitehead Tob. Co., Wilson, N. C., and others.

The above representing a cash investment of about the sum of \$10,860,829.70, and a stock investment of \$15,000,000.00.

7th. That the said American Tobacco Company and the Continental Tobacco Company acquired further the following companies, the plants of which were permanently abandoned and closed after acquisition, to-wit:

(Feb., 1899)	Wright Bros. Tob. Co. of St. Charles, Mo. Cash, \$132,001.10.
(March, 1899)	The Banner Tob. Co., Detroit, Mich. Cash, \$50,000.
(March, 1899)	The Powers Snuff & Tobacco Co., Ltd., of Change-water, N. J. Preferred stock, \$200,000; common stock, \$200,000.
(March, 1899)	M. S. Paceholder, Baltimore, Md. Cash, \$108,950.64.
(July, 1899)	The Union Tob. Co., New York City. Common stock, \$12,500,000.
(July, 1899)	The Aug. Beck Co. of Chicago, Ill. Cash, \$322,296.34.
(Sept., 1899)	Buchanan & Lyall, Brooklyn, N. Y. Cash, \$2,400,000.
(Sept., 1900)	Rice & Vaughan, Louisville, Ky. Cash, \$80,285.46.
(April, 1900)	T. L. Vaughan & Co., Winston, N. C., \$90,506.
(Dec., 1900)	Brown Bros. Co., Winston, N. C., \$67,615.
(Dec., 1900)	P. H. Hanes & Co. and B. F. Hanes & Co., Winston, N. C., \$671,950.
(Jan., 1901)	Rosenblum & Lehman, New York City, \$32,596.52 cash.
(Feb., 1901)	Wellman, Dwire Tob. Co., St. Louis, \$583,026.81 cash.
319 (April, 1901)	C. V. Winfree Tob. Co. of Lynchburg, Va. Cash, \$14,300.90.
(June, 1901)	S. W. Venable Tob. Co., Petersburg, Pa. Cash, \$117,019.48.
(Oct., 1901)	Addison Tinsley Tob. Co., Louisiana, Mo., \$110,466.51.
(Nov., 1901)	D. H. McAlpin & Co. of New York, \$1,442,309.08.
(Dec., 1901)	H. C. Wetmore Tob. Co., St. Louis, Mo., \$378,430.07.
(Dec., 1901)	Wilson & McCallay Tob. Co., Middletown, Ohio., \$361,900.
(May, 1903)	R. F. Morris & Son Mfg. Co., Durham, N. C., \$35,000.
(May, 1903)	T. C. Williams Co., Richmond, Va., \$375,000.
(Sept., 1903)	Butler & Boshier Co., Richmond, Va., \$208,055.13.
(Oct., 1903)	Harry Weissinger Tob. Co. of Louisville, Ky., \$1,179,150.00.
(Nov., 1903)	Manufacturers Tob. Co., Louisville, Ky., \$69,843.09.
(Jan., 1904)	Meriwether Snuff & Tob. Co., Clarkesville, Tenn., \$5,063.13.
(Oct., 1904)	Bland Tobacco Co., Petersburg, Va., \$86,425.
(Jan., 1905)	B. Leidersdorf & Co., Milwaukee, Wis., \$600,000.
(June, 1905)	Weyman & Bro., Chicago, Ill., \$425,500.
(Dec., 1905)	Bucker & Witten Tob. Co., Martinsville, Va., \$512,898.
(Jan., 1907)	Leopold, Miller & Sons, N. Y. City, \$249,193.60.
(Dec., 1906)	D. H. Spencer & Co., Martinsville, Va., \$314,255.

Petitioner shows that the various companies bought out and closed up hereinabove mentioned, and there were others not mentioned, involved a [an] outlay by the defendant and its allied companies, in cash and stock of \$23,341,010.34.

And petitioner further shows that said allied companies acquired in addition to the foregoing, the following companies, the plants of which were not closed but were operated, to-wit:

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(March, 1899)	Irby Cigar & Tob. Co., Ltd., New Orleans, La.,	\$625,000.
(Feb., 1891)	National Tobacco Works, Louisville, Ky., Cash,	\$600,000; Prfd. stock, \$400,000; Com. stock,
		\$800,000.
(March, 1891)	Philip Whitlock, Richmond, Va.,	\$300,000.
(April, 1891)	Marburg Bros., Baltimore, Md. Cash, \$164,	637.35; Prfd. Stk., \$1,230,000; Com. Stk., \$1,
		845,000.
(March, 1895)	Herman Ellis, Baltimore, Md.	\$147,206.46

That outlay for these additional companies represented an investment in cash and stock of \$6,111,843.81.

That in addition to the foregoing and during February, 1900, the American Tobacco Company and the said Continental Tobacco Company and others, in order all for the purpose of effecting the objects heretofore set out, organized the American Snuff Company under the laws of New Jersey, with a capital stock of \$25,000,000.00, so as to effect the same result in the snuff business, as previously effected in plug and other business.

The said American Snuff Company acquired the following companies, all engaged in interstate business:

March, 1900.	Geo. W. Helme, Helmetta, N. J.	\$1,000,000.00
April, 1900.	Stewart-Ralph Snuff Co., Clarksville,	
	Tenn.	101,012.00
Jan., 1901.	DeVoe Snuff Co., Spottswood, N. J.	
June, 1901.	Dalmer & Co., Pittsburg, Pa.	
Dec., 1901.	D. H. McAlpin & Co., Brooklyn,	
	N. Y.	
May, 1902.	McNamara-Laird Co., Birmingham,	
	Ala.	13,488.68
Feb., 1902.	Stewart Snuff Co., Clarksville, Tenn.	65,517.50
Sept., 1902.	Independent Snuff Mills, Virginia..	16,741.31
Sept., 1902.	Dental Snuff Co. of Virginia.....	
May, 1903.	R. F. Morris & Sons Mfg. Co.	4,813.14

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July, 1903.	Skinner & Company, New Jersey...	23,268.84
Oct., 1903.	W. L. Venable & Co., Petersburg,	
	Va.	5,899.75
Jan., 1904.	J. B. Holloway Co. of Kentucky....	24,214.94

March, 1904.	H. Bolander, Chicago, Ill.....	138,044.81
July, 1905.	Weyman & Bro., Pittsburg, Pa.....	1,577,177.26
Since:		
Jan., 1906.	J. H. Fry Co., Clarksburg, W. Va...	8,000.00
do.	Sun Tobacco Co.	2,609.85
do.	R. Starr & Company.....	92,639.91
do.	Arnd Bros., Baltimore, Md.....	20,000.00
do.	Standard Snuff Co., Nashville, Tenn.	

That the outlay herein stated just above aggregates \$3,093,427.99
 8th. That in furtherance of its said objects and purposes in order to control and monopolize the entire tobacco industry and market between the states and with foreign countries, the said defendants did the following:

In August, 1899, they acquired control of the Louisville Spirit-Cured Tobacco Co., a Kentucky corporation.

In September, 1899, they acquired the Golden Belt Mfg. Company, a New Jersey corporation.

In December, 1899, they acquired John Conley & Son of New York, with a capital stock of \$250,000.00, engaged in the manufacture and distribution of tin foil, which said company thereafter acquired all the capital stock of its competitors in the tin foil business, the Johnson Tin Foil & Metal Company of St. Louis.

In March, 1900, they acquired the business, etc., of one S. Anargyros, for the sum of \$680,000.00, which company had been engaged in the interstate and foreign commerce in leaf tobacco and cigarettes in competition with defendants.

In June, 1900, the defendants acquired the John Bollman Company of California, a corporation, paying the sum of \$102,200.00 therefor.

322 In February, 1902, they acquired the F. F. Adams Tob. Co. of Wisconsin, for \$2,205,090.00.

In February, 1906, they got control of Spaulding & Merrick of Chicago, Ill., for \$1,362,900.00.

In August, 1903, defendant acquired for the sum of \$51,505.00, control of the Pinkerton Tobacco Company of Zanesville, Ohio, manufacturers of leaf tobacco.

In 1905, defendant acquired control of Nall & Williams Tobacco Co. of Louisville, Ky., manufacturers of leaf and other tobaccos, for the sum of \$438,000.00.

In October, 1905, they acquired Carroll Bros. of Lynchburg, Va., engaged in the buying and shipping of leaf tobacco throughout the United States.

In 1902, Licorice Root, an imported article, used in the manufacture of tobacco, was principally imported, manufactured, sold and distributed throughout the United States by the following companies:

McAndrews & Forbes of Newark, N. J.;

Messrs. Mellor & Rittenhouse Co. of Camden, N. J.;

J. S. Young Co., of Baltimore, Md.;

Stamford Mfg. Co. of Stamford, Conn.;

John D. Lewis of Providence, R. I.

During May, 1902, all for the purposes aforesaid, the defendant, with others allied, secured control of McAndrews & Forbes, and thereafter, from time to time, acquired the various companies just above mentioned.

In October, 1902, the defendant acquired control of the Brunswick Briar Pipe Co. of New York, for \$468,534.00.

In August, 1903, the defendant acquired the business, etc., of Thomas Cusack of Chicago, Ill., organizing a company with a capital stock of \$250,000.00, the said new company taking over the business of the said Thomas Cusack, which was Sign Painting and Advertising, the same to be used for the purposes heretofore detailed.

That the foregoing constituted an outlay of \$5,558,229.00.

In November, 1901, the defendant acquired a controlling interest in the business of the United Cigar Stores Company, a New Jersey corporation, which company operates cigar stores in the States of New York, Pennsylvania, New Jersey, Ohio, Maryland, Connecticut, Washington, D. C., California, Washington, Delaware, Oregon, Rhode Island, Massachusetts, Indiana, Missouri, Wisconsin, Michigan, Texas, Kentucky, Illinois and Minnesota, and control subsidiary companies whose cigar stores aggregate the sum of \$725,000.00.

In addition to the foregoing, the defendant, the American Tobacco Company, to-day being the present American Tobacco Company, holds and owns through itself and allied companies, the following:

The American Machine & Fdy. Co.	(stock)	51,000.00
The National Cigar Mch. Co.	"	\$3,366,700.00
The New Jersey Mach. Co.	"	51,000.00
The Crescent Cigar & Tobacco Co.	"	20,000.00
The Garson Vending Machine Co.	"	25,000.00
The Standard Tob. Stemmer Co.	(Cash)	64,995.76

In 1901, the defendant, with others allied, having determined on the wholesale manufacture and distribution of cigars, cheroots and stogies, and all for the purposes hereinabove stated, organized the American Cigar Company with a capital stock of \$10,000,000.00, since increased to \$20,000,000.00, under the laws of New Jersey.

That said company since its organization has acquired the following companies, or controlling interests therein:

Jan., 1901.	Powell, Smith & Company	\$2,130,664.00
do.	S. Levy & Co., New York	11,789.00
March, 1901.	Barlow, Rogers & Co., Binghamton.	205,681.00
do.	Hummel, Vogt Company, Kentucky	42,428.00
May, 1901.	Binghamton Cigar Co., Binghamton, N. Y.	1,000.00
do.	Harburger, Homan & Co., New York	800,000.00

Oct., 1901.	Brown Bros. Co., Detroit, Mich....	469,272.00
April, 1902.	Ross, Bruner & Feist, Cincinnati, O.	225,471.00
May, 1903.	Philippi Cigar Mfg. Co., Philippi, W. Va.....	4,203.00
Aug., 1903.	United Cigar Stores, 1 store in New York	54,141.00

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March, 1905.	The American Cigar Machine Co..	
March, 1906.	M. W. Mendel Bros., New York, City	642,482.00
June, 1901.	Havana-American Co., Binghamton, N. Y.	4,000,000.00
May, 1902.	Havana Tobacco Co. (control) a company with capital stock of \$19,000,000.00; American Machine & Foundry Company, N. J.; American Stogie Co., New Jersey; Armsterdam Supply Company; M. Blaskower Co., Nevada; R. D. Burnett Cigar Co., Birming- ham, Ala.; Cliff Weil Cigar Co., Richmond, Va. (Stock)	
	Corp. J. & B. Moos, N. J., (Chi- cago, Ill.)	100,000.00
	J. & B. Moos, Cincinnati, O.....	200,000.00
	Dusel, Goodloe & Co., Philadelphia, Pa.	51,000.00
	Federal Cigar Co., Pennsylvania...	200,000.00
	J. J. Goodrum Tob. Co., Atlanta, Ga.	47,700.00
	Federal Cigar Real Estate Co., Pa..	30,000.00
	Louisiana Tobacco Co., New Orleans	50,000.00
	The Smokers' Paradise Co., Atlantic City	59,000.00
	Cuban Land & Leaf Co., New Jersey	100,000.00
	International Cig. Mach. Co., N. J. Corp. 2	2,920,200.00
	New Jersey Mach. Co., N. J. Corp.	49,000.00
	Porto Rican-American Tob. Co., N. J. Corp.....	659,600.00
	Porto Rican Leaf Tob. Co., N. J. Corp.	250,000.00
325	Jordan, Gibson & Baum, Memphis, Tenn.	42,500.00
	Kentucky, Tob. Product Co.....	35,500.00

That the above outlay aggregates \$16,960,326.76; that the total outlay heretofore set out in the way indicated aggregates \$72,-023,540.84.

9th. In June, 1901, the said defendant, the American Tobacco Company, together with the Continental Tobacco Company, for

the purpose of more effectively carrying out its schemes and designs, created and organized the Consolidated Tobacco Company under the laws of the State of New Jersey, with a capital stock of \$30,000,000.00, afterwards increased to \$40,000,000.00; the object of the said corporation being to more readily enable the financial operations of the two corporations heretofore organized, namely, the American Tobacco Company and the Continental Tobacco Company.

Your petitioner, therefore, shows that the old American Tobacco Company was organized in January, 1890, as hereinbefore set out; that the Continental Tobacco Company was organized in December, 1898, as hereinbefore set out; that the Consolidated Tobacco Company was organized in June, 1901, as hereinbefore set out; that your petitioner, the Peoples Tobacco Company, Limited, was organized in June, 1899, being organized, therefore, about six months prior to the formation of the Consolidated Tobacco Company; that it was in May, 1903, that the Craft Tobacco Company was organized and it and Augustus Craft combined, conspired with the defendants as hereinbefore set out in the original and supplemental petitions.

That not being satisfied with this vast accumulation of wealth and power over tobacco and its products in the United States, the said defendant company determined, as part of its general conspiracy, to restrain and monopolize interstate and foreign trade, and in order more effectively to carry out its purpose to restrain and monopolize tobacco and its products, to cross the waters, and, accordingly, in September, 1901, said defendant purchased for \$5,347,000.00 a Liverpool corporation known as Ogdens, Limited,

then engaged in manufacturing and distributing tobacco and its products. A trade with the English companies followed.

326 resulting in large losses, but, nevertheless, maintained until an agreement was concluded and entered into with the English companies, to-wit, the Imperial Tobacco Co. of Great Britain and Ireland. It was then agreed between the said American Tobacco Company and the said English company that the Imperial Tobacco Company should limit its trade to the United Kingdom, except the right to purchase leaf tobacco in the United States, and that the American Tobacco Company should limit its trade to the United States and its dependencies and Cuba, and there was organized a new company, called the British-American Company, with a capital stock of \$60,000,000.00, which company was to take over the export business in other countries of both the American Tobacco Company and the Imperial Tobacco Company, The American Tobacco Company held two-thirds of the capital stock of this British-American Company.

10th. Now your petitioner represents that the said three companies, namely, the American Tobacco Company, organized in January, 1890, and the Continental Tobacco Company, organized in 1891, and the Consolidated Tobacco Company, organized in 1901, owning and controlling vast interests hereinbefore set out in detail, and others, did, in October, 1904, all for the purposes aforesaid, and

with the object of restraining and monopolizing and conspiring to restrain and monopolize and destroy competition in the interstate trade and foreign trade in tobacco and its raw and finished products and in the articles necessary in the use and manufacture, formed a merged company under the name of the American Tobacco Company under the laws of New Jersey, with total assets aggregating the approximate sum of \$293,620,115.20.

Now your petitioner further represents that since the organization of the New American Tobacco Company merger in 1904, the same methods used from the beginning have continued; that your petitioner charges as a fact what the Supreme Court of the United States found as a fact and stated in its opinion in the case heretofore named in the following words and language, to-wit:

"The record indisputably discloses that after this merger the same methods which were used from the beginning continued to be employed. Thus, it is beyond dispute: First, that since the organization of the new American Tobacco Company that company has acquired four large tobacco concerns; that restrictive covenants against engaging in the tobacco business were taken from the sellers and that the plants were not continued in operation but were at once abandoned. Second, that the new company has, besides, acquired control of eight additional concerns, the business of such concerns being now carried on by four separate corporations, all absolutely controlled by the American Tobacco Company, although the connections as to two of these companies with that corporation was long and persistently denied."

11th. Your petitioner further shows that throughout the United States the defendant company has agents situated in almost every state for the purpose of its purchase of leaf tobacco, and the control of the market thereof, having such representatives both for the purchase *or* [of] raw material and for the sale of the manufactured article.

Your petitioner shows that from 1890 up to and including 1907, the American Tobacco Company, defendant herein, has manufactured over 80% of the cigarettes produced in the United States; thus, for instance, in the year 1890 the total production of cigarettes in the United States was 2,505,106,610, while the American Tobacco Company and its allied companies produced of said number 2,453,458,000, and similar results can be shown for each succeeding year.

The total percentage of smoking tobacco produced in the United States by the American Tobacco Company and its allied companies, has constantly increased, until the year 1906 it amounted to 70% of the entire smoking tobacco used throughout the United States, there having been produced in said year 175,664,091 pounds, out of which 123,026,237 pounds were produced by the American Tobacco Company and its allied companies.

That the same can be said of plug and twist tobacco; that, for instance, the American Tobacco Company and its allied companies produced during the year 1906 81% of the total amount of plug and twist tobacco in the United States. During 1906 the total

amount produced in the United States was 176,749,800 —, of
 328 which 143,906,868 pounds were produced by the American
 Tobacco Company and its allied companies and similar results were accomplished from 1890 to date.

That the same can be said of fine cut tobacco; for instance, the American Tobacco Company and its allied companies produced in 1906 more than 81% of the total amount of fine cut tobacco made in the United States. Out of a total production of 12,742,346 pounds they manufactured 10,321,285 and similar results can be shown from 1890 to date.

During the year 1907 there was a total of 1,069,215,111 little cigars produced in the United States, and 89% of this amount, or 954,001,460, were produced by the American Tobacco Company and its allied companies.

12th. That it was this vast organization of strength throughout the country and abroad, controlling numerous subsidiary companies, as detailed above, which the Supreme Court of the United States, in a proceeding brought by the Government of the United States, declared an unlawful conspiracy, combination, and monopoly in unreasonable restraint of trade, and ordered by said Supreme Court dissolved; that the decree of the Supreme Court, among other things, reads:

"First. That the combination in and of itself, as well as each individual, whether corporate or individual, whether considered collectively or separately, be decreed to be in restraint of trade and an attempt to monopolize and a monopolization within the first and second sections of the antitrust act."

13th. Now your petitioner shows that at the time of the filing of its original and supplemental petitions herein, to-wit, on the 30th day of January, 1908, (original) and the 22nd day of April, 1908 (supplemental) it alleged that it had suffered through the acts, combinations and conspiracies of the defendants, as set out in the original and supplemental petitions, actual damages in the sum of one hundred and sixty-eight thousand, nine hundred and twenty-six dollars and eighty-five cents (\$168,926.85); that under the laws of the United States in such cases made and provided, petitioner was entitled to recover three-fold said damages.

Your petitioner shows that the said defendants named in said original petition and supplemental petition, and more particularly the defendant the American Tobacco Company, and its allied companies, and the individual defendants, James B. Duke, Caleb C. Dula and Percival S. Hill, have continued and are now continuing, and have persisted in continuing the said conspiracy in restraint of trade, and have monopolized and attempted to monopolize, and are continuing to attempt to monopolize the trade in tobacco and its products, and have continued to oppress and are now oppressing, by unfair methods of competition, all for the purposes aforesaid, your petitioner, and have attempted and are continuing to attempt, as part of their conspiracy, to restrain trade and monopolize the interstate and foreign trade in tobacco and its products, and to drive your petitioner from the field of business

and to destroy petitioner; petitioner alleges and shows that such acts on the part of the said defendants have been persisted in from and since the time of the filing of the original and supplemental petitions; that petitioner avers that among the things done by the said defendants, are the following:

First. Granting rebates to peddlers in the form of cash payments, or giving gratis tobacco.

Second. Packing extra coupons in fighting brands of cigarettes.

Third. Interfering with the sale of your petitioner's goods and threatening the party selling them with the withdrawal of the brands of the American Tobacco Company.

Fourth. Selling articles below cost.

That among the brands of cigarettes manufactured and sold by the American Tobacco Company are the following:

"Picayune," "Home Run," "King Bee," and "Coupon."

Your petitioner represents that all of said cigarettes are made from a similar type of tobacco known as burley tobacco and are in form and contents similar and of a similar cost of manufacture; that the first three named brands, to-wit, "Picayune," "Home Run"

330 and "King Bee," have become established brands; that in order to fight your petitioner and to injure *him*, a new fighting brand of cigarette, of the same type and character and of the same cost of manufacture, was put on the market, to-wit, "Coupon" cigarettes; that this cigarette was sold 20 in a package for 5 cents and contained, in addition, two $\frac{1}{2}$ coupons in each package; that this "Coupon" cigarette was, and is, sold at a loss and was used for the purpose of and as part of the plan hereinbefore set out in detail, in trying to drive your petitioner from the business. Petitioner shows that the said American Tobacco Company will not deliver at all, or will reluctantly deliver and sell such cigarettes where there is no competition with petitioner, but seeks to confine its efforts to flood markets with this cigarette where it competes with petitioner in order to destroy petitioner, all as part of its conspiracy to restrain and monopolize the tobacco trade. Petitioner shows that as a result of the acts of said defendants, *his* sales in cigarettes have decreased from 130,430,000 in 1907, to 9,197,000 in 1911.

14th. Your petitioner shows that similar action has been, and is being taken by the defendant, the American Tobacco Company, and its allied companies, and the individuals named with respect to the smoking and chewing tobacco business; that defendants have put out and maintained a fighting brand of tobacco to fight petitioners' brand, with the object and purposes aforesaid, to-wit, a brand called "Victory" tobacco, which is put on the market by defendants, a two-ounce package for 5 cents, and sold to compete with petitioner for the purposes heretofore detailed; that there is no other two-ounce package of Burley tobacco sold in the United States for 5 cents, and that same is not manufactured and sold at a profit, but is sold for the purpose of injuring petitioner.

Petitioner shows further that it has for a long time past manufactured and sold a brand known as Black Eye, and that recently

defendants have, with objects and purposes heretofore stated, *but* [put] on the market and now sell in competition with petitioner a brand called "Black Bird."

Now your petitioner shows that throughout the entire period, since the filing of the first supplemental petition petitioner, and those associated with petitioner, have earnestly, diligently and persistently given attention to petitioner's business, that they
331 have neglected nothing to further the same, that conditions generally have favored an increase of business, but owing to the acts of the defendants, despite every effort made by petitioners, the business of petitioners has constantly decreased and it has become well-nigh impossible for *them* to continue; that by reason of the actions, conspiracies, restraint and monopoly of the said defendants petitioner has been additionally damaged since the filing of the supplemental petition, to-wit, in April, 1908, the sum of \$128,331.57, as follows:

In the year beginning June, 1908, and ending June, 1909, petitioner lost the sum of \$6,966.02; in the term beginning June, 1909, and ending January, 1910 (seven months) petitioner lost the sum of \$42,174.65; in the year from January, 1910, to January, 1911, petitioner lost the sum of \$40,392.58; in the six months beginning January 1st, 1911, and ending July 1st, 1911, petitioner lost the sum of \$38,798.32, or a total actual damage, additional to amount set out in original and supplemental petitions, and accruing since the filing thereof, in the sum of \$128,331.57; that the said sum for each year is reached by taking—as in the original petition and supplemental petition—the sum made in 1903, to-wit, \$40,283.43, and comparing the profits and loss of each year herein set out with the profit and loss of said year 1903.

That petitioner is entitled to have judgment in three times the amount of said actual damage sustained, to-wit, in the sum of \$384,994.71, together with attorneys' fees and costs, all of which will more fully appear from statements annexed, detailing above facts and how result is reached.

Your petitioner shows that by virtue of the acts of the defendant herein set out, by their continuation up to the present time, defendant has violated and has continued to violate not only the law of the United States known as the Sherman Anti-Trust Act, but has violated and has continued to violate the decree of the Supreme Court of the United States in the case of the United States vs. American Tobacco Company, and Others; that said decree, in addition to the part hereinabove quoted, provides as follows:

Fourth. * * * Pending the bringing about of the result just stated (the dissolution of the company) each and all of the
332 defendants, individuals as well as corporations, should be restrained from doing any act which might further extend or enlarge the power of the combination, by any means or device whatsoever."

That defendants, by virtue of their said acts, continued as aforesaid since the said decree, are violating the same.

Wherefore, petitioner prays that this second supplemental and

amended petition be filed; that the defendant, the American Tobacco Company, and defendant, the Craft Tobacco Company, each through its proper officer, and defendant, Augustus Craft, individually, be duly cited and served with a copy thereof; that James B. Duke, Percival S. Hill and Caleb C. Dula, domiciled in the city, county and State of New York, be made parties defendant and duly cited herein, and duly served with copy of original, supplemental and second supplemental petitions, through the marshal of the United States for the Southern District of New York, as provided by law, and that after all due and legal proceedings had there be judgment as prayed for by plaintiff in its original and first supplemental petitions in the sum of \$168,926.85, which amount should be trebled in accordance with Act of Congress so as to amount to \$506,780.55, and in the further sum, as set out in this second supplemental petition, of \$128,331.57, which should be trebled in accordance with the said Act of Congress, so as to amount to \$384,994.71, making the total sum due your petitioner \$297,258.42, which should be trebled as heretofore set out, amounting to \$891,775.26, for which your petitioner prays judgment against each and all of the said defendants jointly and in solido, and petitioner prays for interest from date of judicial demand, for attorney's fees, for costs, and for such further and general relief as he may in law be entitled to receive.

(Signed)

MERRICK, LEWIS, GENSLER &
SCHWARZ,

Att'ys for Plaintiff.

Order.

Let this second supplemental and amended petition be filed and served as prayed for and according to law.

(Signed)

RUFUS E. FOSTER, *Judge.*

333

Marshal's Return on Copy of Petition, Supplemental Petition, and Second Supplemental Petition and Citation upon American Tobacco Company.

Filed Aug. 30th, 1911, in the Late U. S. Circuit Court, Eastern District of Louisiana, in the Case of the Peoples Tobacco Company vs. American Tobacco Company, No. 13531. Offered by Plaintiff.

Victor Loisel. Received Aug. 30, 1911. U. S. Marshal's office.

On August 30, 1911, I served the original of which this writ is a certified copy together with a certified copy of the second supplemental and amended petition on the American Tobacco Company by handing the same to its manager, Mr. W. R. Irby, in person, in the City of New Orleans, Louisiana.

VICTOR LOISEL,

U. S. Marshal,

(Signed)

By E. M. KINLER,

Deputy U. S. Marshal.

- 334 *Marshal's Return on Copy of Petition, Supplemental Petition, and Second Supplemental Petition and Citation upon Percival S. Hill.*

Filed Sept. 8th, 1911, in the Late Circuit Court of the United States, Eastern District of Louisiana, in the Case of the Peoples Tobacco Company vs. American Tobacco Company, No. 13531. Offered by Plaintiff.

Form No. 302.

I hereby certify, That on the 1st day of September, 1911, at the City of New York, in my district, I personally served the within Citation upon the within-named Defendant, Percival S. Hill, at #111-5-Avenue, N. Y. City, New York, by exhibiting to him the within Certified Copy, and at the same time leaving with him a Certified copy thereof, and at the same time and place I left with him a Certified Copy of Petition and Certified Copy of Supplemental and Amended Petition and Certified Copy of Second Supplemental Petition.

(Signed)

WM. HENKEL,
*United States Marshal,
Southern District of New York.*

Dated September 5th, 1911.

(W. C.)

- 335 *Marshal's Return on Copy of Petition, Supplementary Petition, and Second Supplementary Petition and Citation upon Caleb C. Dula.*

Filed Sept. 8th, 1911, in the Late Circuit Court of the United States, Eastern District of Louisiana, in the Case of the Peoples Tobacco Company vs. American Tobacco Company, No. 13531. Offered by Plaintiff.

Form No. 302.

I hereby certify that on the 5th day of September, 1911, at the City of New York, in my district, I personally served the within Citation upon the within-named Defendant, Caleb C. Dula, at #111-5-Avenue, N. Y. City, New York, by exhibiting to him the within Certified Copy, and at the same time leaving with him a Certified copy thereof, and at the same time and place I left with him a Certified Copy of Petition and Certified Copy of Supplemental and Amended Petition and Certified Copy of Second Supplemental Petition.

(Signed)

WM. HENKEL,
*United States Marshal,
Southern District of New York.*

Dated September 5th, 1911.

(W. C.)

- 336 *Marshal's Return on Copy of Petition, Supplemental Petition, and Second Supplemental Petition and Citation upon James B. Duke.*

Filed Sept. 8th, 1911, in the Late Circuit Court of the United States, Eastern District of Louisiana, in the Case of the Peoples Tobacco Company vs. American Tobacco Company, No. 13531. Offered by Plaintiff.

Form No. 302.

I hereby certify, that on the 5th day of September, 1911, at the City of New York, in my district, I personally served the within Citation upon the within-named defendant James B. Duke, at #111-5-Avenue, N. Y. City, New York, by exhibiting to him the within Certified Copy, and at the same time leaving with him a Certified Copy thereof, and at the same time and place I left with him a Certified Copy of Petition and Certified Copy of Supplemental and Amended Petition and Certified Copy of Second Supplemental Petition.

(Signed)

WM. HENKEL,
*United States Marshal,
Southern District of New York.*

Dated September 5th, 1911.
(W. C.)

- 337 *Motion and Order of Plaintiff Fixing Exceptions of Augustus Craft and the Craft Tobacco Company to the Second Amended and Supplemental Petition for Trial.*

Filed October 19th, 1911, in the Case of The Peoples Tobacco Company vs. American Tobacco Company in the Late Circuit Court of the United States, Eastern District of Louisiana. Offered by Plaintiff.

No. 13531.

U. S. Circuit Court, Eastern Dist. of Louisiana.

PEOPLE'S TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO Co. et als.

On motion of the Peoples Tobacco Company, Limited, plaintiff herein, through undersigned counsel, and on suggesting to the court that exceptions have been filed herein by Augustus Craft, and the Craft Tobacco Company, Limited, defendants herein, and that same should be fixed for trial:

It is ordered by the Court that said exceptions filed herein by said defendants be, and they are hereby fixed for trial on Monday, October 23rd, 1911, at 11 o'clock a. m.

(Signed)

MERRICK, LEWIS, GENSLER &
SCHWARZ, *Att'ys for Pl'tf.*

Service of the foregoing is hereby accepted and notice waived, without prejudice to whatever defenses we may have in the premises.

(Signed)

W. S. PARKERSON,

(Signed)

STIRLING PARKERSON,

Att'ys for the Craft Tobacco Co. & Augustus Craft.

338 *Motion and Order of the Plaintiff Fixing Exceptions of the American Tobacco Company, Limited, to the Second Amended and Supplemental Petition for Trial.*

Filed October 19th, 1911, in the Case of The Peoples Tobacco Company vs. American Tobacco Company, No. 13531, in the Late Circuit Court of the United States, Eastern District of Louisiana. Offered by Plaintiff.

U. S. Circuit Court, Eastern Dist. of Louisiana.

No. 13531.

PEOPLES TOBACCO COMPANY, LIMITED,

VS.

AMERICAN TOBACCO Co. et als.

On motion of the Peoples Tobacco Company, Limited, plaintiff herein, through undersigned counsel, and on suggesting to the Court that exceptions have been filed herein by the defendant, the American Tobacco Company:

It is ordered by the Court that said exceptions filed herein by said defendant, be, and they are hereby fixed for trial on Monday, October 30th, 1911, at 11 o'clock a. m.

(Signed)

MERRICK, LEWIS, GENSLER &

SCHWARZ, *Att'ys for Pl'tf.*

Service accepted.

(Signed)

DENEGRE & BLAIR,

Att'ys for A. T. Co.

- 339 *Motion and Order of Plaintiff Fixing Exceptions of Caleb C. Dula, Percival S. Hill and James B. Duke to the Second Amended and Supplemental Petition for Trial.*

Filed October 19th., 1911, in the Case of The Peoples Tobacco Company vs. American Tobacco Company, No. 13531, in the Late Circuit Court of the United States, Eastern District of Louisiana. Offered by Plaintiff.

U. S. Circuit Court, Eastern District of Louisiana.

No. 13531.

PEOPLES TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO Co. et als.

On motion of the Peoples Tobacco Company, Limited, plaintiff herein, through undersigned counsel, and on suggesting to the court that exceptions have been filed herein by Caleb C. Dula, Percival S. Hill and James B. Duke, defendants herein, and that same should be fixed for trial;

It is ordered by the Court that said exceptions, filed herein by said defendants, be, and they are hereby fixed for trial on Monday, October 30th, 1911, at 11 o'clock a. m.

(Signed)

MERRICK, LEWIS, GENSLER &
SCHWARZ, Att'ys for Pl'tf.

Service accepted.

(Signed) DENEGRE & BLAIR,

Att'ys for Exceptors.

- 340 *Order Maintaining Exceptions and Dismissing Second Supplemental and Amended Petition.*

Extract from the Minutes.

November Term, 1911.

NEW ORLEANS, Friday, November 10, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

No. 13531.

PEOPLES TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY et als.

This cause came on to be heard at a former day upon the Exceptions filed by the Defendants, the American Tobacco Company; the

Craft Tobacco Company; Augustus Craft; James B. Duke; Percival S. Hill and Caleb C. Dula, to the Second Supplemental and Amended Petition of the Peoples Tobacco Company, Limited, Plaintiff, herein filed on August 29th, 1911, and after hearing arguments of Counsel for the respective parties, the cause was submitted and taken under advisement by the Court;

Whereupon, and on due consideration thereof, it is now ordered by the Court that the said Exceptions herein filed by the defendants, the American Tobacco Company; the Craft Tobacco Company; Augustus Craft; James B. Duke; Percival S. Hill and Caleb C. Dula, to the second Supplemental and Amended Petition of the Peoples Tobacco Company, Limited, Plaintiff, be, and the same are hereby maintained, and that the said Second Supplemental and Amended

Petition of the Peoples Tobacco Company, Limited, Plaintiff, 341 herein filed on August 29th, 1911, be dismissed at Plaintiff's costs.

342

Receipt for Registered Mail.

Filed December 19, 1914.

No. 51839.

Receipt for Registered Mail.

This receipt represents a letter or parcel registered at the post office indicated by postmark. Inquiries concerning registered mail should state the number of the article, date of its registration, and the names and addresses of the sender and addressee. The sender of the article represented by this receipt should write the name and address of the addressee on the reverse side.

Postmark: New Orleans, La., Feb. 11, 1914. Registered.

(Stamped:) "Return receipt demanded."

1 class postage prepaid.

POSTMASTER.

Per (Stamped:) I. C. JONES.

Reverse side of Receipt for registered mail: "Peoples Tobacco Pet. Sent by Clerk U. S. C't to Percival S. Hill, Pres'd't."

343 *Registry Return Receipt and Copy of Letter, Dated Feb'y 11th, 1914, Written by H. J. Carter, Clerk, to Percival S. Hill, President American Tobacco Company.*

Filed December 19th, 1914.

Copy.

(Written on Letterhead of Clerk's Office, United States District Court.)

NEW ORLEANS, LA., February 11th, 1914.

Mr. Percival S. Hill, President American Tobacco Company, 111 Fifth Avenue, New York, N. Y.

DEAR SIR: At the request of Messrs. Merrick, Gensler & Schwarz, attorneys for the Peoples Tobacco Company, Limited, plaintiff, in the matter entitled Peoples Tobacco Company, Limited, versus American Tobacco Company, No. 14369 of the docket of this Court, I beg to enclose herewith a certified copy of the Petition filed in said cause and also a certified copy of the Marshal's Return showing service of Citation and also a certified copy of said petition on the American Tobacco Company, through Hon. Alvin E. Hebert, Secretary of State of the State of Louisiana.

Respectfully yours,
(Signed)

H. J. CARTER, *Clerk.*

344 Post Office Department.
Official Business

Penalty for private use to
avoid payment of postage,
\$300.

[In circle:] Madison Sq. Sta., N. Y., Feb. 16. 12 M., 1914.

[Erased by stamp:] Postmark of Delivering Office and date of Delivery. 788A.

Original Reg. No.
51839.

Return to:

U. S. District Court.
(Name of sender.)

Street and number
of Post Office Box

NEW ORLEANS,
LOUISIANA.

The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

Form 1548.

Registry Return Receipt.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery 2, 16, 191-.

(To be filled in by person signing receipt.)

(Signed)

P. S. HILL.

(Signature or name of addressee.)

R. J. DUFFULTY.

(Signature of addressee's agent.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Registered matter, the delivery of which has not been restricted by the sender or the addressee, is delivered to any responsible person who customarily receives the ordinary mail of the addressee. (See amended sec. 858, P. L. and R.)

When the above receipt has been properly signed, it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

346 *Depositions of Alvin E. Hebert and Exhibits Attached.*

Filed December 19th, 1914.

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLES TOBACCO COMPANY, LIMITED,

VS.

AMERICAN TOBACCO COMPANY.

Notice of Deposition de Bene Esse.

Please take notice that the plaintiff herein will take the testimony of Alvin E. Herbert and Richard Flower, both of whom reside in the City of Baton Rouge, State of Louisiana, each and all of whom reside more than one hundred (100) miles from the place of trial herein, and more than one hundred (100) miles from any place at which a circuit court of the United States for the Eastern District of Louisiana is appointed to be held by law, at the final hearing for use on behalf of the plaintiff, before John F. Odom, Esq., a notary public in and for the Parish of East Baton Rouge, State of Louisi-

ana, who is not of counsel nor interested in this cause, at the State House in the City of Baton Rouge and State of Louisiana, on the 28th day of June, 1912, at 12 o'clock noon, and thereafter from day to day as the taking of the depositions may be adjourned; and such testimony will be taken in accordance with the provisions of sections 863, 864 and 865 of the Revised Statutes of the United States and the equity rules.

Dated at New Orleans, La.

(Signed)

MERRICK, LEWIS, GENSLER &
SCHWARZ, *Att'ys for Plaintiff.*

Service acknowledged; no objections to notice.

(Signed)

DENEGRE & BLAIR,
Att'ys for Def't.

347 United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLE'S TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY.

It is agreed between parties that the signature of the witness is waived and that these depositions may be sent by the Notary to the Clerk of the United States District Court at New Orleans, La., by registered mail or by express, the cost of these depositions to be taxed against losing party.

Appearances:

For the "People's Tobacco Company, Limited," Plaintiff, Mr. Ralph J. Schwarz.

For the Defendant, The "American Tobacco Company," Mr. J. P. Blair.

ALVIN E. HEBERT being duly sworn:

Question by Mr. Schwarz: You are Secretary of the State of the State of Louisiana?

Answer by Mr. Hebert: Yes.

Question by Mr. Schwarz: Who is at present acting as Assistant Secretary?

Answer by Mr. Hebert: Mr. Richard H. Flower.

Question by Mr. Schwarz: Is he familiar with the records and correspondence of the office, relative to the filing with the Secretary of the State, of the powers of Attorney to represent foreign corporations?

348 Answer by Mr. Hebert: Yes. It is a Department that he has held for the past five years.

Mr. RICHARD H. FLOWER being first duly sworn deposes and says:

Question by Mr. Schwarz: Mr. Flower, you are the acting Assistant Secretary of the State of Louisiana, are you not?

Answer by Mr. Flower: Yes sir, I am.

Question by Mr. Schwarz: You are the gentleman to whom Mr. Hebert the Secretary of State just referred. Were you?

Answer by Mr. Flower: I was.

Question by Mr. Schwarz: Do you know, Mr. Flower, a gentleman named Emile J. O'Brien, Jr. What office if any, did he occupy?

Answer by Mr. Flower: Yes. As Chief Clerk in the Secretary of State's Office from December 1st, 1904, until the 4th of May, 1911, and after that, Assistant Secretary of State.

Question by Mr. Schwarz: Mr. Flower, I show you a letter dated December 1, 1911, directed to the Secretary of State at Baton Rouge, and signed W. R. Perkins, and ask you to look at that letter and see if you received it?

349 Answer by Mr. Flower: I did receive it.

In connection with the testimony of the witness a copy of this letter is offered in evidence and marked "Flower 1."

By Mr. Blair: Counsel calls upon Plaintiff to state object of the offer.

Answer by Mr. Schwarz: The object of the offer is to take testimony on the exception filed by Defendant with respect to the question as to whether or not any one was authorized to represent in the State of Louisiana, the "American Tobacco Company" as its duly appointed agent.

By Mr. Blair: In view of the evasive reply to request for information, Counsel objects to the letter as irrelevant and incompetent evidence and reserve the right, when counsel is required by the Court to state the object of the offer, to make his objections more definite.

Question by Mr. Schwarz: Mr. Flower I can show you a copy of a letter, December 7, 1911, addressed to W. R. Perkins at New York, came from the office of the Secretary of the State of Louisiana, and will ask you to look at that and see if it is an answer to the letter shown you a few moments ago and marked "Flower 1"?

Answer by Mr. Flower: It is.

350 In connection with the testimony of the witness, copy of the letter is attached to this deposition, marked "Flower 2."

By Mr. Blair: Counsel for Defendant makes the same objection to the offer in evidence of the above referred to letter.

Question by Mr. Schwarz: I show you, Mr. Flower a copy of letter dated December 23, 1911, directed to Messrs. Merrick, Lewis, Gensler & Schwarz, New Orleans, and signed by Emile J. O'Brien, Jr., Assistant Secretary of State, and ask if that is copy of a letter which came from this office?

Answer by Mr. Flower: It is.

In connection with the testimony of the witness, we offer this copy in evidence marked "Flower 3."

By Mr. Blair: Counsel objects to the letter as irrelevant and incompetent evidence and especially as incompetent to waive the existence of any power of Attorney referred to therein, or as to the character of such power of Attorney.

Question by Mr. Schwarz: Mr. Flower there is a recorded revocation of power of Attorney granted by the "American Tobacco Company" to W. R. Irby of New Orleans, La., which is entered as received, filed and recorded on December 14, 1911, in Book 5, Folio 182. Is that correct?

351 Answer by Mr. Flower: It is.

It is agreed that this revocation appears in the depositions of Percival S. Hill & Josiah T. Wilcox, taken February 5, 1912, in New York City.

Question by Mr. Schwarz: Mr. Flower I show you a document bearing No. 129 American Tobacco Company to W. R. Irby filed April 24, 1899. I'll ask you to look at that document and state if it is an official document filed in this office, constituting Mr. Irby the Agent and Representative of the American Tobacco Company?

By Mr. Blair: Counsel objects to the form of the question. The document must speak for itself; the witness can only identify it as a part of his official records.

Answer by Mr. Flower: Yes.

Then in connection with the testimony of the witness a copy of this document No. 129 is offered in evidence consisting of three pages as follows:

(1) Copy of the resolution passed at a meeting of the Board of Directors of the "American Tobacco Company on April 19, 1899.

(2) Power of Attorney, and

(3) Acknowledgement, marked "Flower 4."

It is agreed that no copies need be certified except copy of "Flower 4" being document No. 129.

352 Question by Mr. Schwarz: Look at this letter of December 23rd to Mr. Schwarz's firm. Have you ever seen any power of Attorney to Mr. Irby of May 14, 1911?

Answer by Mr. Flower: I have not, I looked it up.

353 "FLOWER 1."

(Copy.)

W. R. Perkins, Attorney at Law, 111 Fifth Avenue, New York.

December 1st, 1911.

Secretary of State, Baton Rouge, La.

DEAR SIR: I expect in the near future to have to qualify one and probably two corporations to do business within your State, and for

this purpose I wish you would send me in duplicate such blank forms as you have, and accompany it with information as to the amount of tax or license fee to be paid, and to whom, and the amount of other fees to be paid, and to whom, I would also appreciate the sending of any pamphlet you may have showing your corporation laws.

Very truly yours,
(Signed)

W. R. PERKINS.

"Ne Varietus."

(Signed) JNO. FRED. ODOM,
[SEAL.] *Notary Public.*

354

"FLOWER 2."

(Copy.)

December 7th, 1911.

Mr. W. R. Perkins, New York, N. Y.

DEAR SIR: Your favor of the 4th inst. enclosing power of Attorney of American Tobacco Co. received. If you wish same filed and recorded in this office, please send New York or New Orleans exchange amounting to \$1.75 payable to the State Treasurer of Louisiana.

Yours truly,

Ass't Sec'y of State.

"Ne Varietus."

(Signed) JNO. FRED. ODOM,
[SEAL.] *Notary Public.*

355

"FLOWER 3."

(Copy.)

Dec. 23rd, 1912.

Merrick, Lewis, Gensler & Schwarz, New Orleans, La.

GENTLEMEN: Replying to yours of the 22nd inst., beg to say that the "American Tobacco Company," of Jersey City, N. J., appointed Mr. W. R. Irby, of New Orleans, La., agent in this State for service of legal process on May 14th, 1911.

Yours very truly,
(Signed)

EMILE J. O'BRIEN, JR.,
Ass't Secretary of State.

(Pencil notation "Flower 3. Send this on.)

"Ne Varietus."

(Signed) JNO. FRED. ODOM,
[SEAL.] *Notary Public.*

356

"FLOWER 4."

STATE OF LOUISIANA:

I, the undersigned Secretary of State, of the State of Louisiana, do hereby certify that the annexed three pages, contain a true, complete and full copy of the Procuration, Acknowledgment of Signatures, and Copy of Resolution of the Board of Directors of the American Tobacco Company of the State of New Jersey to Mr. W. R. Irby, of the City of New Orleans, Louisiana, as appears by comparing the same with the originals now on file and of record in the archives of this office, filed and recorded in this office on April 24th, 1899.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this 29th day of June A. D. 1912.

(Signed)

ALVIN E. HEBERT,

[SEAL.]

Secretary of State.

357 *Copy of Resolution Passed at the Meeting of the Board of Directors of the American Tobacco Company, Held April 19th, 1899.*

Resolved: That this company hereby authorizes and empowers its President or Vice President and Secretary by written Power of Attorney, under its corporate seal, to make, constitute and appoint W. R. Irby, Agent of this Company in the State of Louisiana, upon whom service of process may be made, and which said agent shall be, and is hereby authorized to enter appearances in behalf of this Company and to receive and accept service of process in all legal proceedings against this Company within the State of Louisiana, and this Company does further hereby declare its domicile and place of business in the State of Louisiana, in so far as it *has* by the laws of said State required to have and declare the same, to be in the City of New Orleans, Parish of *New Orleans*.

The undersigned, Josiah Browne, Secretary of the American Tobacco Company, hereby certifies that the foregoing is a true copy of a resolution adopted by the Board of Directors of said Company, held on the 19th day of April, 1899.

JOSIAH BROWNE, *Secretary.*

358

Power of Attorney.

Know all men by these presents: That the American Tobacco Company, a corporation organized under the laws of the State of New Jersey, hereby constitutes and appoints W. R. Irby of New Orleans, Louisiana, a resident of said State, its agent, upon whom may be served all lawful process against said Company, and he is hereby authorized to enter appearance and to receive and accept

service of process in all legal proceedings against said Company within the State of Louisiana.

And said Company further declares that its domicile and place of business, in so far as it is by the laws of the State of Louisiana required to have or declare the same in said State, is in the city of New Orleans, Parish of Orleans, in which City it has established an office at Nos. 400 to 414 South Peters Street.

In testimony whereof, the said Company, in pursuance of the resolution of its Board of Directors, duly passed on the 19th day of April, a certified copy of which is hereto attached, has caused its corporate seal to be hereto attached, and these presents to be subscribed by its President and Secretary, in the City of New York, State of New York, this 19th day of April, 1899.

THE AMERICAN TOBACCO CO.,

By J. B. DUKE, *President*.

[SEAL.]

Attest:

JOSIAH BROWNE, *Secretary*.

Witnesses:

JAMES M. RHETT,

EDWARD C. REICHER.

359 STATE OF NEW YORK,

City and County of New York, ss:

On this 19th day of April, 1899, before me, the undersigned authority, personally came and appeared J. B. Duke, President of the American Tobacco Company, and Josiah Browne, Secretary of said Company, with both of whom I am personally acquainted, who each being duly sworn, say that they and each of them reside in the city of New York; that they are respectively the President and Secretary of the American Tobacco Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed thereto by order of the Board of Directors of said Company, and that they signed said instrument respectively as President and Secretary of said Company by like authority; and they and each of them did further declare that they are the officers of said Company respectively as aforesaid, and that their respective signatures subscribed to said instrument are their genuine signatures thereto subscribed by them for the uses and purposes in said instruments set forth.

All of which is declared by J. B. Duke and Josiah Browne, in my presence, and in that of the two witnesses whose names are to said instrument and also hereto subscribed as such together with me J. J. O'Keefe, Notary Pub. as aforesaid.

[SEAL.]

JOHN J. O'KEEFE,

*Notary Public in and for the City and
County of New York.*

JAMES M. RHETTE.

EDWARD C. REICHER.

Internal Revenue Stamp, Cancelled.

360 STATE OF LOUISIANA,
Parish of East Baton Rouge:

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLE'S TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY.

I, John Fred Odom, a Notary Public, in and for said Parish and State, duly commissioned and qualified, hereby certify that the above witnesses Alvin E. Hebert and Richard H. Flower, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that their depositions were taken down by a stenographer appointed by me for that purpose in the presence of the witnesses and from their statements and the stenographic notes were afterwards reduced to writing by a typewriter and when so written down were read over to said witnesses respectively and the signatures of the witnesses to same being waived by consent of counsel for the respective parties I did not cause said witnesses to sign same; that said depositions were taken pursuant to the annex- notice at the office of the Hon. Alvin E. Hebert, Secretary of State at Baton Rouge, Louisiana, on the 28th day of June 1912; that the parties were represented at the taking of the said depositions by their respective counsel as set forth. That the several exhibits recited were offered in evidence and marked as specially noted in the foregoing depositions, and were paraphrased "Ne Varietur" by me said Notary as a further identification with said depositions; and that I am not counsel or relative of either party or otherwise interested in event of this suit.

361 In testimony whereof I have hereunto set my hand and official seal, this 29th day of June, 1912.

(Signed)

JNO. FRED ODOM,

[SEAL.]

Notary Public.

362

Leaflet.

Filed December 19th, 1914.

Points to be Remembered in Booking "Special" Orders.

This offer applies to Retail Dealers located in West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma and Texas (except El Paso and Pecos, Texas District).

1. Orders must be for not less than 240 pounds of any brand or brands appearing in The American Tobacco Company's Factory Descriptive and Price List of Plug and Twist Tobaccos; or any brand or brands appearing in its Price List of F. R. Penn Branch

of The American Tobacco Company; or any brand or brands of R. A. Patterson Tobacco Company's Smoking Tobacco appearing in our Price List; or U. S. Marine, or an assortment of these brands. No order can be divided into more than three shipping instalments. No shipping instalment must be for less than eighty pounds of said brands.

2. Orders must be booked so that last shipment will be made not later than August 15, 1912, though the entire quantity ordered may be shipped in one, two or three instalments at an earlier date if desired.

3. Minimum shipping quantity on which we prepay freight under this offer is 80 pounds of brands manufactured or carried in stock in the same city.

4. Call and recall to dealer's attention that countermands must be sent to his jobber (not to the American Tobacco Company) not later than fifteen days before date set for shipment.

5. Don't fail to give shipping dates for second and third instalments.

Don't fail to give full postoffice and shipping address of retailer.

363 Don't fail to specify weight of package and style and weight of plug.

Don't fail to write plainly.

Please note:

The $\frac{1}{2}$ pound free in 10 on Yellow Tag Twist,
The $\frac{1}{2}$ pound free in 10 on Cotton Boll Twist,
The 1 pound free in 12 on Black Bear,

will not apply on sales under the terms of this offer.

January 10, 1912.

364

Leaflet.

Filed December 19th, 1914.

This Applies to Maryland, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, and Louisiana.

Yellow Tag Twist and Cotton Boll Twist.

To Salesmen:

In addition to The American Tobacco Company's offer of free U. S. Marine in Drop Shipments, Yellow Tag Twist and Cotton Boll Twist will be billed on the basis of $\frac{1}{2}$ pound free in 10 when purchased either from our Stock or in Drop Shipments to retail dealers located in the above named States.

December 27, 1911.

(Jobber's Signature.)

365

Leaflet Marked "(4)."

Filed December 19, 1914.

24 5¢ Packages of Smoking Tobacco Free with 60-Pound Drop Shipment of R. J. Reynolds Tobacco Company's Listed Brands.

To Salesmen:

In addition to any drop shipment offer in effect, R. J. Reynolds Tobacco Company will, until further advised, in drop shipments to bona fide retail dealers, for account of jobbers, include, free of charge, 24 5¢ packages of any of its listed brands of smoking tobacco, with each 60-pounds, or multiple thereof, of its listed brands of smoking tobacco, or chewing tobacco, or smoking and chewing assorted, if desired; provided each 60-pounds, or multiple thereof, contains one 6-pound box of Spencer Natural Leaf and not less than one gross of its listed brands of smoking tobacco, assorted, if desired.

For example: A dealer who purchases 120-pounds, including in the order two 6-pound boxes of Spencer Natural Leaf and two gross, or more, of smoking tobacco, will be allowed 48 5¢ packages of smoking tobacco free; other multiples of 60-pounds will carry free goods in like proportion.

To get the full benefit of this offer, in counting R. J. Reynolds Tobacco Company's 5¢ and 10¢ packages of smoking and chewing tobacco in packages weighing 8-ounces, and over, refer to Page 2, of its Descriptive Price List No. 20, dated February 8th, 1913.

Spencer Natural Leaf, 16-ounce plug, is a high grade chewing tobacco, manufactured from rich, ripe, selected burley leaf. It will pay, to please our customers by explaining this offer to them.

All orders must be for prompt shipment.

366 S. S. 3-D-12.
Feb. 8, 1913.

(Jobber's Signature.)

NOTE.—Spencer Natural Leaf tin tags when attached to cards which will be furnished by R. J. Reynolds Tobacco Company, on request, are redeemable by it, in accordance with its offer thereon, at one cent each, in cash.

367

Price List Leaflet.

Filed December 19th, 1914.

Jobbers' Cost List. For Office Use Only.

January 2, 1913.

Cigarette Paper Marketed by the American Tobacco Company, 111 Fifth Avenue, New York.

Goods sold subject to the express condition that transportation is at purchaser's risk, without respect to whether freight is prepaid or not.

2

Cigarette Paper.

368

Brands.

Price per M 2/10

RIZ LA +	Books of 125 Leaves.....	1 1/2	\$16.50	1
	Books of 175 Leaves.....	800	18.50	4
	Books of 225 Leaves.....	400	21.50	10
	Books of 275 Leaves.....	2500	25.50	5
		300—		
La Croix Wheat Straw.....	Books of 175 Leaves, Grande.....	1300—1000	27.50	5
"	Books of 100 Leaves.....		17.50	
"	Books of 200 Leaves.....		25.00	
Riz Francis.....	Books of 100 Leaves.....		7.50	
Riz Lone Star.....	Books of 100 Leaves.....		9.50	

Shipping Quantity.

The smallest number of books which we will ship is 2,500, which quantity, however, may be made up of an assortment of the above brands.

We Do Not Pay Freight.

The above prices are F. O. B., New York, and are subject to no allowance except the usual 2 per cent. for cash.

370 All prices are subject to change without notice.

 We do not agree to deliver goods at destination.

No Representative or Employee has authority to change any price list, circular or letter issued by this Company.

All orders subject to acceptance at New York Office, and prices ruling on day of shipment.

Caution.

Many of the brands quoted in this list are packed in different styles and sizes.

Only those orders which are full and explicit can be filled promptly and accurately.

If your order is not complete, we must refer it back to you to supply the missing information. This delays shipment and is a needless annoyance to both you and ourselves.

Let your orders state clearly: 1. Quantity. 2. Brand (giving name in full). 3. Size of package.

371

Circular.

Filed December 19th, 1914.

W. R. Irby Branch of the American Tobacco Company.

NEW ORLEANS, LA., January 16, 1911.

Cable Address: "Perique, New Orleans."

To the Retailer:

Owing to the great and increasing demand for Burley Cigarettes, we now offer the brand of "Red Sun," packed in double-decked boxes of 10, wrapped in tinfoil, and unhesitatingly state that "Red Sun" is the very highest *garde* Burley Cigarette that can be produced at any cost.

Each package contains a coupon of the cash value of one half cent each, or assortable with other coupons in securing presents.

We are also packing in "Red Sun" a beautiful lithographed picture of a Southern League ball player, and a picture of a prominent athlete.

The price of "Red Sun" Cigarettes is \$3.50 per thousand, and "They are made in New Orleans," the Home of the Burley Cigarette.

Trusting "Red Sun" will meet with your hearty co-operation, proving itself most acceptable to the consumer.

Respectfully,

W. R. IRBY BRANCH OF THE AMERICAN
TOBACCO CO., NEW ORLEANS.

372

Circular No. 344.

Filed December 19, 1914.

Circular No. 344.

Cable Address: Powhattan.

Home Office; Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, May 31, 1911.

Change in Prices.

To Our Customers:

Effective at the beginning of business June 1, 1911, the prices of the following brands of Cigarettes will be as shown below:

Brands.	Price Per M.
Cairo (Plain)	\$3.90
Fatima	5.75
Fez	3.50
Hassan	3.90
Karnak	6.00
Mecca	3.90
Old Mill	3.75
Perfection	3.90
Piedmont	3.90
Richmond Straight Cut (all styles)	6.25
Sovereign	3.90
Sweet Caporal	3.90
Lenox	4.00
Tolstoi	3.90
Emblem	3.50

Brands.	Price per car ton of 750.
American Beauty	\$2.00
Broadleaf	2.00
Cycle	2.00
Drum	2.00
Home Run	1.90
King Bee	1.90
Picayune	1.90

The above mentioned prices are subject only to the usual 2% cash discount.

All orders for the above mentioned brands of Cigarettes given our salesmen or mailed direct to us on or after June 1, 1911, that are accepted by us will be billed at the prices named.

The packing of gratis with Fez, Karnak, Old Mill, Lenox, and Emblem Cigarettes will be continued until further notice.

All orders subject to acceptance by our New York office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

374

Circular No. 417.

Filed December 19th, 1914.

Circular No. 417.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, July 31, 1911.

Discontinuance of Offer on Increased Shipments of Piedmont Cigarettes.

To Our Customers:

Effective at the close of business, July 31, 1911, we withdraw the offer of 7½% on increased shipments of Piedmont Cigarettes, outlined in our Circular No. 254, dated February 16, 1911.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

375

Circular No. 462.

Filed December 19th, 1914.

No. 462.

W. R. Irby Branch of The American Tobacco Company.

NEW ORLEANS, La., Oct. 7, 1911.

Cable Address: "Perique—New Orleans."

Free.

"Home Run" and "Picayune" Cigarettes with 15-Carton Factory Drop Shipments Smoking Tobacco.

To Our Customers:

Commencing October 9, 1911, we will, for a limited time, make Drop Shipments, in limited quantities, to your customers, for your

account and risk, located in the State of Louisiana, north of a line drawn east and west at Alexandria, of:

15 cartons of any brands Smoking Tobacco appearing on our current price list No. 10-A, dated September 1, 1911, provided, at least, one (1) carton, each, "Red Cross", "Fair Play" and "King Bee" tobacco is embraced in each 15 cartons ordered.

With each 15 carton shipment made in accordance with the above, we will include free,

150 "Home Run" cigarettes, 15s.

150 "Picayune" " "

This gratis has a retail value of one dollar to your customer.

Freight will be prepaid to any point on River or Railroad to which we can obtain through bill of lading.

376 All brands sold under this Factory Drop Shipment Offer will be invoiced to you at prices ruling on day of shipment and all drop shipment orders submitted to us under this offer must be for prompt shipment.

Only bona-fide sales, to retailers, to be used exclusively in their business, will be shipped by us.

All orders subject to acceptance by this office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

W. R. IRBY BRANCH OF THE
AMERICAN TOBACCO CO.

377 *Circular No. 497.*

Filed December 19th., 1914.

Circular No. 497.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, November 25, 1911.

To Our Customers:

On and after December 1st, 1911, the brands designated in the four enclosed pamphlets will be owned, marketed and shipped by the respective companies, and we will thank you to commence, immediately on this date, sending your orders for the particular brands direct to each company.

Please give this your careful attention so as to enable us to give you better and prompter service than were your orders sent elsewhere.

For the present, and until other notice shall be given by the owning and marketing company, all prices and offers now in effect will continue in force.

The W. R. Irby Branch of The American Tobacco Company at New Orleans, on and after December 1st, is a branch of the Liggett & Myers Tobacco Company, and orders that have heretofore been sent to that Branch at New Orleans should continue to be sent to "W. R. Irby Branch of Liggett & Myers Tobacco Company, New Orleans, La.," and orders for Irby Brands that heretofore have been sent to The American Tobacco Company should be sent to W. Duke, Sons & Co. Branch, Liggett & Myers Tobacco Co., Durham, N. C.

Spaulding & Merrick, The John Bollman Company and Pinkerton Tobacco Company are, on and after December 1st, controlled by Liggett & Myers Tobacco Company, but orders for their
378 goods should be sent direct to the respective companies just as heretofore. Orders for "Bro. Jonathan," "Nero," "Nienac," and "Cyclone" Fine Cut, heretofore marketed by The American Tobacco Company, should be sent to Spaulding & Merrick, Chicago, Ill.

S. Anargyros, Luhrman & Wilbern Tobacco Company and Federal Cigar Company (the latter heretofore controlled by American Cigar Company) are, on and after December 1st, controlled by P. Lorillard Company, but orders for their goods should be sent direct to the respective companies, just as heretofore. S. Anargyros' address will be, December 1st, Jersey City, N. J.

Butler-Butler (Incorporated), F. R. Penn Tobacco Company, R. A. Patterson Tobacco Company, Blackwell's Durham Tobacco Company, F. F. Adams Tobacco Company, Monopol Tobacco Works, the American Cigar Company and its subsidiaries (excepting the Federal Cigar Company), are, on and after December 1st, controlled by The American Tobacco Company, but orders for their goods should be sent to the respective companies just as heretofore.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

379

Circular No. 508.

Filed December 19th, 1914.

Circular No. 508.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, December 9, 1911.

All Our Offers on Plug, Plug Smokings, and Twist Tobaccos
Withdrawn.

To Our Customers:

All our offers on Plug, Plug Smokings, and Twist tobaccos, whether for Stock or Drop Shipment orders, have been cancelled and withdrawn.

All orders subject to acceptance by our New York Office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

380

Circular No. 1.

Filed December 19th., 1914.

Circular No. 1.

Established 1760.

P. Lorillard Company.

JERSEY CITY, N. J., December 12, 1911.

Plug Offers Discontinued.

To Our Customers:

All offers in effect on the brands of Plug and Plug Smoking Tobaccos owned and marketed by this Company, whether on purchases for stock or in Drop Shipment are canceled and withdrawn.

Until further notice we will make Drop Shipments of 100 lbs., or over of our Plug Tobaccos, freight prepaid, to nearest point on railroad or river, to which through bill of lading can be obtained.

All orders subject to acceptance by our home office, Jersey City, N. J.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

P. LORILLARD COMPANY.

381

Circular No. 512.

Filed December 19, 1914.

Circular No. 512.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, December 13, 1911.

To Our Customers In Delaware, Maryland, District of Columbia, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas (except El Paso and Pecos, Texas District):

Effective this date and until further notice, we will make Drop Shipments to retail dealers located in above named States, to consist

of 72 pounds of any of the brands of Plug and Twist tobaccos named in the enclosed leaflet, or U. S. Marine Cut Plug tobacco, or an assortment of these brands, and allow the retail dealer 36-5¢ packages of U. S. Marine, free.

Larger Drop Shipments ordered as above in multiples of 24 pounds will be entitled to free U. S. Marine in the same proportion.

For purpose of free goods, also shipping weight, Piper Heidsieck metal boxes will be figured as 1-1/2 dozen metal boxes to 2 pounds; Boot Jack metal boxes, 12 pieces as one pound; U. S. Marine 5¢ size, one carton (4 dozen 5¢ packages) as 6 pounds.

American Navy and Scrapple are excluded from the above offer of free goods, but may be included in Drop Shipments to make up shipping quantity, when purchased in Drop Shipments.

Freight will be prepaid on Drop Shipments of 72 pounds or over to nearest point on railroad or river in above named States to which through bill of lading can be obtained from our point of shipment.

382 All orders subject to acceptance by our New York Office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

383

Circular No. 531.

Filed December 19th, 1914.

Circular No. 531.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, January 2, 1912.

To Our Customers:

We enclose herewith several copies of our new Price List of Plug and Twist Tobaccos, effective January 2, 1912.

Brands appearing in said Price List are subject to a trade discount of 7% on invoice and 2% discount allowed for cash. No other discount of any nature will apply.

An additional supply of Price Lists will be furnished on application.

All orders subject to acceptance by our New York Office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this company.

Very respectfully,

THE AMERICAN TOBACCO CO.

384

Circular No. 533.

Filed December 19th, 1914.

Circular No. 533.

Cable Address: Powhatan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, January 10, 1912.

Dear Sirs: To enable our customers to compete for the trade of retail dealers who do a carrying or credit business, many of whom heretofore bought unknown brands of tobacco direct from manufacturers on attractive terms of payment, we are forwarding to your address a supply of "Special Order" blanks, upon which you have our authority to book orders from retail dealers located in the States named in said Order Blanks, for quantities of not less than 240 pounds of any brand or brands appearing in our Factory Descriptive and Price List of Plug and Twist Tobaccos (except American Navy and Scrapple), or any brand or brands appearing in our Price List of F. R. Penn Branch, of the American Tobacco Co., or any brand or brands of R. A. Patterson Tobacco Co.'s Smoking Tobaccos appearing in our Price List, or U. S. Marine, or an assortment of these brands. Said orders of not less than 240 pounds may be divided into as many as three shipping installments, no one of which must be for less than 80 pounds, which are to be forwarded by us on or about the dates named by purchaser in the blank space on "Special Order" blank provided for that purpose, between date of taking order and August 15, 1912.

Orders may be booked under this arrangement for prompt or deferred shipment as above outlined, at prices in effect when orders are booked. No deals of any kind whether in the nature of
385 free goods or cash allowances which we may have in effect from time to time will appear under this offer unless we specifically so state.

With each shipment under this offer, aggregating 80 pounds, we will include, free of charge, 2 pounds of Penn's Natural Leaf, and in larger quantities, 1 pound of Penn's Natural Leaf, free, with each 40 pounds purchased, and when shipment of all installments of orders placed under this arrangement has been made, we will remit direct to retailers, our check covering One Cent per pound (except on free goods) on all brands included in the order.

Retail dealers reserve the privilege of countermanding any unshipped portion of their orders, fifteen days before date specified for shipment, should an unforeseen condition arise which would make it to their interest to do so; though, if this privilege is exercised, they

forfeit the One Cent per pound allowance on that portion of the order which had been shipped previous to the receipt of countermand.

It must also be understood that no retailer will be entitled to benefits under this offer unless the order comes to us duly signed, and on the order blanks furnished for this purpose.

The terms of payment for goods shipped under this arrangement will be October 15, 1912, without interest, to be closed by retailer's note with endorsement of jobber for whom shipment is made, covering each shipment as made, or 5% discount for cash within ten days from date of invoice covering each shipment.

We are sending with the "Special Order" blanks, a letter explaining this offer to your salesmen; also leaflets containing in condensed form, such points as should be kept constantly in mind when booking orders under this arrangement. If you will address and sign these letters and forward them, together with one of the leaflets to your salesmen, we believe they will, through a better understanding of this offer, be able to get quick and satisfactory results.

Yours very truly,

THE AMERICAN TOBACCO CO.

On back of Circular in pencil: Special order deal 5/25/12.

387

Circular No. 538.

Filed December 19th, 1914.

Circular No. 538.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

The American Tobacco Company,
111 Fifth Avenue.

NEW YORK, January 26, 1912.

Battle Ax 18-oz.

To Our Customers:

We invite special attention to Battle Ax, 3 x 12, 18 oz. plug, 4-10¢ cuts, packed in 9-pound boxes and 18-pound butts. Price 25¢ per pound, subject to the usual 2% discount for cash, but not subject to any other allowance or discount, whether for Stock or Drop Shipment.

Our salesmen will be instructed to book orders for Battle Ax 18 oz., from retail dealers for the account of our customers, at 27-½¢ per pound, when included in Drop Shipments, and at 28¢ per pound for shipment from their stocks.

Battle Ax 18 oz., at 10¢ per cut is excellent value to the consumer and should prove a ready seller for both jobber and retailer who push its sale.

388 All orders subject to acceptance by our New York Office.
No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Yours respectfully,

THE AMERICAN TOBACCO CO.

389

Circular No. 539.

Filed December 19th, 1914.

Circular No. 539.

The American Tobacco Company,
111 Fifth Avenue.

Cable Address: Powhattan.
Home Office: Jersey City, N. J.

NEW YORK, February 1, 1912.

To Our Customers:

This is to advise that, effective February 1, 1912,

American Navy
Blackberry
Square Deal
Battle Ax
Lute Gordon
Tenpenny
Big Four
Red J
Wildfire

will not apply under the provisions of our Special Order offer, neither will these brands apply for free U. S. Marine in regular drop shipments under the offer outlined in our Circular No. 512. These brands, however, may be included in regular drop shipments to make shipping weight and to secure prepayment of freight to retail dealers.

Black Bear with one pound free in twelve is hereby withdrawn from our offer of free U. S. Marine in drop shipments, outlined in our Circular No. 512.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Yours very truly,

THE AMERICAN TOBACCO CO.

390

Circular No. 540.

Filed December 19th, 1914.

*Circular No. 540.*The American Tobacco Company,
111 Fifth Avenue.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

NEW YORK, February 1, 1912.

To Our Customers:

We are enclosing herewith Jobber's Cost and Selling lists of our Plug and Twist tobaccos.

The Jobber's Cost List is for Office use only and shows the cost to our customers of the brands of Plug and Twist tobaccos marketed by us. These prices are subject to no discount except 2% for cash within ten days.

The Selling Lists show the prices at which our salesmen are instructed to book orders for the account of our customers for the brands mentioned therein.

We suggest that you furnish your salesmen with these Selling Lists without delay.

An additional supply of Price Lists will be furnished on application.

All orders subject to acceptance by our New York Office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

391

Circular No. 19.

Filed December 19th, 1914.

Circular No. 19.

Established 1760.

P. Lorillard Company.

JERSEY CITY, N. J., February 3, 1912.

Notice.

To our customers:

We will discontinue making the special allowance, of 10¢ per thousand, deducted from the face of the Invoice, on your purchases

of Sub Rosa Cigarros, (thereby withdrawing Circular No. 3), on orders which you mail to us later than February 17, 1912.

All orders for Sub Rosa Cigarros bearing Post Mark of a later date than February 17, 1912, will not receive this special allowance.

All orders subject to acceptance by our Home Office, Jersey City, New Jersey.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

P. LORILLARD COMPANY.

392

Circular No. 545.

Filed December 19th, 1914.

Circular No. 545.

The American Tobacco Company,
111 Fifth Avenue.

Cable Address: Powhattan.

Home Office: Jersey City, N. J.

NEW YORK, February 17, 1912.

Discontinuance of Gratis.

To our customers:

Effective at the close of business February 17, 1912, the packing of Egyptienne Straights gratis with following brands of Cigarettes, as outlined in our Circular No. 509, dated December 15, 1911, is discontinued:

Sweet Caporal Cigarettes.

Hassan “

Mecca “

All orders for the above mentioned brands of Cigarettes received by us bearing postmark dated February 17, 1912, that are accepted by us, will be shipped with Egyptienne Straights gratis attached.

All orders subject to acceptance by our New York Office.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

Twist Tobaccos.

Cream Nut.

Cotton Boll.

Yellow Tag.

396

Smoking Tobaccos.

Bob White.

Old English Curve Cut.

Tuxedo.

Double Bar Plug Cut.

Patterson's Seal Plug Cut.

Victory

(Granulated).

Queen Quality.

Sovereign Cigarettes.

Derby Little Cigars.

The five per cent. allowance will of course be made on shipments from your stock of not less than 30 pounds, and on shipments from our factory of not less than 60 pounds, consisting of one or more of the above brands, without including any of the other brands listed in our Price List.

(Reverse of Circular No. 646.)

Offer to Our Customers Covering Shipments from Their Stocks Only.

During the continuance of the above offer, we will send to our customers our check for an amount equal to three per cent. (3%) of jobbers' cost on all shipments from their stock (of not less than 30 pounds) to legitimate retail dealers, under the offer outlined above, such shipments of any of the brands involved not to be in the aggregate in excess of their purchases direct from us since February 1, 1912. This allowance will enable our customers to prepay freight on shipments from their stock, and will also justify them in carrying in stock a reasonable quantity of those of our brands which are in demand in their respective trade territories.

397 Shipments or deliveries under this offer must be reported to this office within one week from date of shipment, on the blanks which we will furnish for this purpose. Each report must show date of shipment, full name and post office address of dealer (street and number in large cities), and bear your signature.

Payments will not be made to retailers on shipments reported in any other manner or on any other blanks.

Please Note: Drop Shipments from factory are not to be reported on these blanks.

One (1) carton of each brand of Smoking Tobacco, Cigarettes and Little Cigars will be the minimum shipping quantity, whether in shipments from jobber's stock or in Drop Shipments from factories, and no allowance will be paid on sales of any brand in less than full cartons.

For the convenience of salesmen in booking orders for shipping quantity, all 5¢ and 10¢ brands of Smoking (and Chewing Tobaccos in Metal Boxes) will figure as 18 pounds per gross. Cigarettes and Little Cigars will figure as 3 pounds per thousand.

All orders subject to acceptance by our New York Office.
No representative or employee of this Company has authority to
change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

398

Circular No. 760.

Filed December 19, 1914.

Circular No. 760.

The American Tobacco Company.
111 Fifth Avenue.

Cable Address: Powhattan.
Home Office: Jersey City, N. J.

NEW YORK, January 15, 1913.

Special Allowance on Imported Cigarette Papers.

To Our Customers:

We will make you an allowance of seventy-five cents (75¢) per M
on all shipments of the following brands of Imported Cigarette Papers
that we make you direct from this date, January 15th, up to and
including February 15th, 1913.

Brands:

Riz La Croix.
La Croix Wheat Straw.
Riz Francais.
Riz Lone Star.

This 75¢ allowance will be deducted from face of the invoice, and
our invoices will be subject to no other allowance or discount except
the usual 2% for cash. For prices and styles of packing of the vari-
ous kinds of cigarette books we refer you to our Price List.

No order mailed to us bearing postmark of a later date than Feb-
ruary 15th, 1913, will be entitled to this allowance.

399

All orders subject to acceptance by our New York Office.

No representative or employee of this Company has author-
ity to change any circular, letter or price list issued by this Com-
pany.

Very respectfully,

THE AMERICAN TOBACCO CO.

(Pencilled notation "Watch, 2/15.)

400

CIRCULAR No. 796.

Filed December 19, 1914.

Circular No. 796.

The American Tobacco Company,

111 Fifth Avenue,

New York, April 12, 1913.

Cable Address: Powhattan, Home Office, Jersey City, N. J.

Change in Price of Cigarette Paper.

To our Customers in: West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Arkansas, Oklahoma, and Texas (except El Paso and Pecos, Texas, District):

Effective at the close of business this date, the price of Cigarette Paper will be as follows:

Riz La Croix.	Books of 125 leaves.	\$18.00	per M
" "	Books of 175 "	20.50	" "
" "	Books of 225 "	23.50	" "
" "	Books of 275 "	28.00	" "
" "	Books of 175 " Grande.	30.00	" "
La Croix Wheat Straw.	Books of 100 "	19.50	" "
" "	Books of 200 "	28.00	" "
Riz Francais	Books of 100 "	8.50	" "
Riz Lone Star	Books of 100 "	10.50	" "

	Small size.	Large size.
Persian (Ribbed)		
150 sheets in book, 50 Large Books; 60 small Books to box; in lots of less than 25 boxes	\$1.35	\$1.50
"	1.10	1.25
" .....	.95	1.05
In lots of 25 to 50 boxes.....		
In lots of 50 to 100 "		
401		
Persian (Ribbed) .....	.85	.95
Richmond Gem (Ribbed)	1.10	1.40
Fragrant Vanity Fair (Ribbed) .....	....	....
" .....	....	1.20
" .....	....	.90
" .....	....	.80
"
In lots of 100 boxes and over		
150 sheets in book; 50 books in box		
130 sheets in book; 50 books in box		
In lots of less than 100 boxes.....		
In lots of 100 to 1000 boxes.....		
In lots of 1000 boxes and over.....		

The above prices of Cigarette Paper will be subject to a discount of eight per cent. (8%) and two per cent. (2%), to be deducted from face of invoice.

These prices are subject to no other discount except the usual two per cent. (2%) for cash within ten days.

All orders subject to acceptance by our New York Office, at prices ruling on date of shipment.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Very respectfully,

THE AMERICAN TOBACCO CO.

402

No. 3.

The American Tobacco Company.

111 Fifth Avenue.

NEW YORK, May 3, 1913.

Cable Address: Powhattan.

Home Office, Jersey City, N. J.

To Our Customers:

We have recently sent you the new Price List of products of The American Tobacco Company. You will note that this constitutes a radical change of method of the Company in the marketing of its goods.

We have adopted this method of selling by "list" with jobbers' discounts, rather than at a "flat" price, at the request of a large number of our customers who advise us that the greatest benefits to our customers will be secured by a "list" price. The adoption of this method involves a considerable expense to the Company.

It has been a custom in the tobacco trade to give special consideration to some jobbing customers as compared with others. We are not condemning that practice, and realize that there is to be said in favor of its justice that some jobbers are much more active and effective distributors than others. We desire to assure our customers that so far as this Company is concerned, None of its customers now enjoy any confidential or other advantage over any other customer.

The policy of the law of several States, including the State
403 of New Jersey which has recently enacted such legislation is distinctly against all special concessions, rebates and confidential prices, and we believe that the trend of legal and legislative public opinion throughout the country is against it. In taking this course, we are, therefore, as we believe, in entire harmony with the current intelligent thought in the matter of propriety in business.

We have no right to control, and shall not seek to control, the prices at which our customers shall sell to retailers. We do have a right to say, though, that the list prices are fair prices for our products, and that the discounts we allow to our customers from this list represent only a legitimate jobbers' profit.

Very truly yours,

PERCIVAL S. HILL, *President.*

404

Circular No. 222.

Filed December 19, 1914.

P. Lorillard Company.

Established 1760.

Circular No. 222.

JERSEY CITY, N. J., March 17, 1913.

Lorillard's Special 5% Drop Shipment.

To Our Customers in Ohio, Indiana, Illinois (Except Cook County), Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Kansas, Nebraska, Missouri, Arkansas, Oklahoma, Louisiana, Colorado, Montana, Wyoming, Utah, Idaho, Oregon, Nevada, New Mexico, and El Paso and Pecos, Texas District:

Effective this date, and until further notice, we will make Lorillard's Special 5% Drop shipments, for your account, to retail dealers located in above named States, to consist of at least 12 cartons of three or more of any of our listed brands of Plug, Smoking or Fine Cut tobacco (5 pounds of Plug counts as one carton). Scrap tobacco is not included in this offer. This offer applies only
405 to full cartons, boxes or butts.

On such Drop Shipments we will deduct 5% from our invoice, enabling you to make a similar allowance to your retail customers.

No other Drop Shipment offer will apply on these Lorillard's Special 5% Drop Shipments.

Under the above offer, when including the 25¢ or 50¢ sizes, 6 packages of 50¢ size or 12 packages of 25¢ will be counted as one carton; 2 dozen Stag 5¢ tins counts as one carton; 5 pounds of Plug tobacco counts as one carton.

The above offer is to be extended by you to retail dealers only, and does not apply to sub-jobbers, peddlers, branch houses, or our direct customers, and the privilege of working same will be immediately withdrawn from any of our customers using the offer to the injury of our business and brands.

Freight will be prepaid on these Special Drop Shipments to nearest point on Railroad or river in above named States to which through bill of lading can be obtained from our point of shipment.

All orders subject to acceptance by our Home Office, Jersey City, N. J.

No representative or employee of this Company has authority to charge any circular, letter or price list issued by this Company.

Very respectfully,

P. LORILLARD COMPANY.

N. B.—Smooth Climax billed 1 lb. free in 15; ½ lb. free in 7½ until further advised.

Filed December 19th, 1914.

DEAR SIR: We are sending you today a supply of "Special Order" Blanks, on which you may book orders for 240 pounds or more of any brand or brands appearing in The American Tobacco Company's Factory Descriptive and Price List of Plug and Twist tobaccos (except American Navy and Scrapple) or any brand or brands appearing in its Price List of F. R. Penn Branch of The American Tobacco Company, or any brand or brands of R. A. Patterson Tobacco Company's Smoking Tobaccos appearing in our Price List; or U. S. Marine, or an assortment of these brands. These orders may be divided into as many as three (3) shipping instalments, no one of which must be for less than 80 pounds, which are to be forwarded by the manufacturer on or about the dates named by the purchaser in the blank space on "Special Order" blanks provided for that purpose, between the date of taking the order and August 15, 1912. Orders may be booked under this arrangement for prompt or deferred shipment as above outlined, at prices in effect when orders are booked.

No deals of any kind, in the nature of free goods or cash allowances, which The American Tobacco Company have in effect from time to time, will apply on this offer, unless they specifically so state.

Should you find a dealer who is not attracted by the time feature of this proposition, you may offer him 5% discount for cash
407 within ten days from date of invoices covering shipments made under this offer.

Note the clause which enables the retailer to countermand any unshipped portions of orders placed under this offer fifteen days before date specified for shipment. This privilege justifies the trade in buying liberally under this offer, as they are relieved of any extraordinary risk, should an unforeseen condition arise which would not make it to their interest to have their orders shipped as placed.

All orders taken by you under this offer must be submitted to us, duly signed by the retailers, on "Special Order" blanks, and no one of the shipments, whether immediate or for future date, must be for less than 80 pounds.

This offer should enable you to sell to many dealers who have heretofore bought their tobaccos direct from manufacturers, and we ask your active co-operation in placing it before this class of trade especially.

We call your especial attention to the foot note on "Special Order" blank, relative to shipping quantities (80 pounds) of brands carried in stock or manufactured in the same city.

Yours very truly,

P. S.—For convenience of salesmen, on the reverse side you will find list of brands that may be included in Drop Shipments from each of The American Tobacco Company's factories.

408

(Reverse Side of Preceding Letter.)

In addition to the brands manufactured in the respective cities as shown on The American Tobacco Company's Price List, for convenience in making up "Special Orders," it will carry in stock at:

Louisville, Ky.

Brands:

American Navy.
Banker.
Brazila, 5¢ bags (cases of 4 doz.)
Cotton Boll Twist.
Derby.
General Forrest.
Gilt Edge Smoking, 10¢ bags
(cases of 4 doz.)
Gold Rope.
Jack Spratt (10 lb. Caddies).
Lucy Hinton.
Lucky Strike Roll Cut, 10¢ tins.
Man's Pride.
Meriwether's Pig Tail Twist.
Nashville Greenville.
Nobby Spun Roll.
Old Peach.
Old Tennessee Royal Brazil, 10¢
bags.

Brands:

Owen's Select.
Penn's Natural Leaf.
Penn's No. 1 (3 1/3 to lb.).
Pumpkin Twist.
Pure Brazil, 5¢ bags.
Red Ant Twist (10 to lb.).
Red J. (4 to lb., 10 lb. boxes).
Seal of Tennessee, 5¢ bags.
Signal Twist.
Spear Head Clubs (14 2/3 oz.).
Spear Head (12 oz., 3 x 12).
The Old Statesman.
Tuxedo, 5¢ bags & 10¢ tins.
U. S. Marine, 5¢ size.
Wild Cat, 10¢ bags (cases of 4
doz.).
Yellow Tag Twist.

409

Nashville, Tenn.

Boot Jack (2 lb. boxes).
Boot Jack (Metal Boxes).
Bull's Head.
Buster.
Button (12 lb. Butts).
Corker.
Derby.
Lucky Strike Roll Cut, 10¢ tins.
Parrot (14 & 28 lb. Butts).

Penn's Natural Leaf.
Penn's No. 1 (3 1/3 to lb.).
Piper Heidsieck (2, 4 & 8 lb.
boxes).
Piper Heidsieck (Metal Boxes).
Red J. (4 to lb., 10 lb. boxes).
Tuxedo, 5¢ bags & 10¢ tins.
U. S. Marine, 5¢ size

Richmond, Virginia.

Battle Ax (6 & 12 lb. boxes).
Big Four (6 lb. boxes).
Boot Jack (1 & 2 lb. boxes).
Boot Jack (Metal Boxes).
Brazila.

Meriwether's Pig Tail Twist (10
to lb.).
Parrot.
Piper Heidsieck (2, 4 & 8 lb.
boxes).
Piper Heidsieck (Metal Boxes).
Spear Head Clubs (14 2/3 oz.
5 1/2 & 11 lb. boxes).

Button (12 lb. Butts).

Corker.

Five Brothers.

Old Tennessee Royal Brazil.

Old Honesty.

Spear Head (12 oz., 4½ lb. boxes).

Standard Navy (7½ lb. boxes).

Town Talk (6½ lb. boxes).

U. S. Marine, 5¢ size.

Yellow Tag Twist (10 to lb.).

Reidsville, N. C.

Battle Ax (6 lb. boxes).

Boot Jack (2 lb. boxes).

Boot Jack (Metal Boxes).

Corker (5 & 10 lb. Caddies).

Derby (10 lb. boxes).

Jack Sprat (10 lb. boxes).

Lucky Strike Roll Cut 10¢ tins.

Meriwether's Pig Tail Twist (10 to lb.).

Old Peach.

Parrot (7 lb. boxes).

Piper Heidsieck (2 & 4 lb. boxes).

Piper Heidsieck (Metal Boxes).

Tuxedo, 5¢ bags & 10¢ tins.

U. S. Marine, 5¢ size.

Yellow Tag Twist (10 to lb.).

410 *Letter from Emile J. O'Brien, Jr., to Merrick, Lewis, Gensler and Schwarz.*

Filed December 19th, 1914.

Edward Everett, Secretary of State.

State of Louisiana,

Department of State.

BATON ROUGE, Dec. 23rd, 1911.

Merrick, Lewis, Gensler & Schwarz, New Orleans, La.

GENTLEMEN: Replying to yours of the 22nd inst., beg to say that the "American Tobacco Company," of Jersey City, N. J., appointed Mr. W. R. Irby, of New Orleans, La., agent in this State for service of legal process on May 14th, 1911.

Yours very truly,

EMILE J. O'BRIEN, JR.,
Ass't Secretary of State.

- 411 *Letter from Emile J. O'Brien, Jr., to Merrick, Lewis, Gensler and Schwarz.*

Filed December 19th, 1914.

Edward Everett, Secretary of State.

State of Louisiana,

Department of State.

BATON ROUGE, May 24th, 1912.

Merrick, Lewis, Gensler & Schwartz, New Orleans, La.

GENTLEMEN: Replying to yours of the 23rd inst., beg to hand you herewith copy of letter written to you on December 23rd, 1911.

We beg to say that we made an error in stating Mr. W. R. Irby, was appointed on May 14th, 1911. The said documents filed on that date is a revocation of the appointment of Mr. Irby by the said company made on April 24th, 1899, and not an appointment.

Yours very truly,
(Signed)

EMILE J. O'BRIEN, JR.,
Ass't Secretary of State.

- 412 *Opinion of the Court.*

Filed December 29th, 1915.

United States District Court, Eastern District of Louisiana.

No 14369.

PEOPLES TOBACCO COMPANY

vs.

AMERICAN TOBACCO COMPANY.

Plaintiff, a Louisiana corporation domiciled in New Orleans, on January 4, 1912, filed a petition asking for triple damages under the Sherman Anti-Trust Law. Defendant is a New Jersey corporation. Citation was served the same day on W. R. Irby as agent of the defendant. Defendant excepted, setting up that it was not engaged in business in Louisiana at the date of service and that Mr. Irby was not its agent. A second citation was served on the Assistant Secretary of State of Louisiana on January 20, 1912, and to this timely exception was also filed. On February 2, 1912, another citation was served on the Secretary of State, and again exception was filed as to this service.

The American Tobacco Company was dissolved by a decree entered November 16, 1911, which decree also ordered that a new corporation, to be known as the Liggett & Myers Tobacco Company, be organized

and that the factories and business of the American Tobacco Company known as the W. R. Irby Branch, located in New Orleans, be sold to the new corporation, the sale to include storage houses, tobacco and other supplies, certain securities and even the book accounts and cash. The decree of course provided for the disposition of other property and other factories not necessary to enumerate. On December 1, 1911, the American Tobacco Company executed a deed, conveying the Irby Branch to the Liggett & Myers Tobacco Company and conveying all of its real estate holdings in Louisiana to the American Cigar Company, all in conformity to the decree.

413 On the same day W. R. Irby who had been the designated agent of defendant resigned as director of the American Tobacco Company and ceased to be its employee. On December 15, 1911, the revocation of his power of attorney was filed with the Secretary of State of Louisiana. This revocation was by letter of Percival S. Hill, one of the vice-presidents of the company and apparently actively engaged in rearranging its affairs in order to conform to the decree of dissolution. The resignation of Irby and the revocation of his power of attorney do not seem to have been considered by the board of directors of the company, and it is contended by the plaintiff that the revocation has never been legally effected.

There could be no doubt, however, that the American Tobacco Company made every effort to comply with the decree of dissolution and to cease doing business of the nature and kind it had been doing in Louisiana, which was the operation of its factories and sales-rooms in the City of New Orleans, and in good faith attempted to revoke its power of attorney to Irby. It is not a very violent presumption that Mr. Hill had the authority to so revoke it, considering the condition of affairs obtaining at the time, and I must hold that Irby was not the agent of the company for the purpose of citation, and therefore the service on him was invalid, regardless of whether or not the company was doing business in Louisiana at the time.

But I am also of the opinion that the company was not doing business in Louisiana within the meaning of the law in order that it might be considered as having been "found" in this district.

Each case necessarily depends upon its own facts. It is 414 conceded that the American Tobacco Company at the time of service was selling goods in Louisiana to the jobbers and sending drummers into Louisiana to solicit orders of the retail trade, to be turned over to the jobbers, the charge being made by the jobbers to the retailer. It is not shown that any of these agents were domiciled in the state or that they had the right or authority to make sales for account of the defendant, collect money or to extend credit.

Plaintiff relies upon the case of International Harvester Company vs. Kentucky, 234 U. S. 579. But the facts are not at all parallel, as in the Harvester case the agents, or at least some of them, resided in Kentucky and had authority to make firm sales and to collect. In the other cases cited the facts are easily distinguishable. In my opinion, the instant case is ruled by the decisions in *Goldey vs. Morning News*, 156 U. S. 518; *Conley vs. Matheison Alkali Works*,

190 U. S. 411; Green vs. Chicago, Burlington & Quincy Railway Company, 205 U. S. 530.

Entertaining the view that the company was not doing business in Louisiana, it is unnecessary to consider the decisions in this circuit relative to the validity of Act No. 54 of 1904, providing for service on foreign corporations through the Secretary of State, except to refer to same. (See Simon vs. Southern Railway Company, 195 Fed. 56, and 184 Fed. 959.)

The exceptions will be maintained and the services quashed.

415 *Judgment Maintaining Exceptions to the Jurisdiction, Quashing Service, and Dismissing Suit.*

Extract from Judgment Book.

November Term, 1915.

NEW ORLEANS, Wednesday, December 29th, 1915.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

No. 14369.

PEOPLES TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY.

This cause came on at a former day to be heard upon the exceptions to the jurisdiction filed by the defendant to the petition herein, and after hearing evidence and testimony and arguments of counsel for the respective parties, the matter was submitted, when the Court took time to consider:

Whereupon and upon due consideration thereof, and for the written reasons of the Court on file herein.

It is now ordered, adjudged and decreed that the said exceptions to the jurisdiction filed by the defendant to the petition herein, be and the same are hereby, maintained, that the services of citations issued herein be quashed, and that this suit be dismissed at plaintiff's costs.

Judgment rendered December 29, 1915.

Judgment signed January 6, 1916.

(Signed)

RUFUS E. FOSTER, Judge.

416

Motion for New Trial.

Filed January 7th, 1916.

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLES TOBACCO COMPANY
vs.
AMERICAN TOBACCO COMPANY.

Now into Court, through undersigned counsel, comes the Peoples Tobacco Company, plaintiff in the above numbered and entitled cause and, shows to this Honorable Court that the judgment rendered herein by this Honorable Court on the 29th day of December, 1915, is contrary to the law and the evidence for the following, among other reasons, to-wit:

That the Court erred in finding, both as a matter of fact and as a matter of law, that W. R. Irby the agent and representative of defendant Company, was no longer its agent and representative at the time of service made upon him in this cause.

That the Court erred in finding that the authority of said W. R. Irby the recognized representative of the defendant for the purpose of service, had, in fact or legally been revoked.

That the Court erred in holding the defendant Company was not at the time of service doing business in the State of Louisiana and subject to service therein.

That the Court erred in holding that the said defendant Company was not found within the State of Louisiana, within the meaning of the Act of Congress known as the Sherman Anti-Trust Act, and in holding that said defendant was not properly served accordingly.

That the Court erred in holding that it was without jurisdiction because said defendant was not found within its jurisdiction within the meaning of the Act of Congress known as the Sherman Anti Trust Law.

That the Court erred in holding that it was without jurisdiction on the ground that the said defendant was not doing business in the State of Louisiana, or was not served with service in the State of Louisiana.

That the Court erred generally in holding that it was without jurisdiction in the cause within the meaning of the Constitution and Laws of the United States.

Wherefore, the Peoples Tobacco Company, through undersigned counsel, moves this Honorable Court for rehearing in said cause.

(Signed)

MERRICK, GENSLER & SCHWARZ.

418

Order Refusing Motion for Rehearing.

Extract from the Minutes.

November Term, 1915.

NEW ORLEANS, Friday, January 7th, 1916.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

No. 14369.

PEOPLES TOBACCO COMPANY, LIMITED,

vs.

AMERICAN TOBACCO COMPANY.

This cause came on to be heard upon the motion, this day filed by the plaintiff, for a rehearing upon the judgment rendered herein on December 29th, 1915, and signed on January 6th, 1916, maintaining the exceptions of jurisdiction filed by the defendant and dismissing this suit, and was submitted by counsel for plaintiff in suit:

Whereupon, and on due consideration thereof, it is now ordered by the Court that a rehearing in this cause be, and the same is hereby, refused, and that the judgment heretofore entered herein remain undisturbed.

419 *Petition for Writ of Error, Assignment of Errors, Bill of Exceptions, and Order.*

Filed January 17th, 1916.

United States District Court, Eastern District of Louisiana.

No. 14369. At Law.

PEOPLES TOBACCO CO., LTD.,

vs.

AMERICAN TOBACCO COMPANY.

Petition for Writ of Error.

Now comes the Peoples Tobacco Company, Ltd., a corporation created and organized under the laws of the State of Louisiana, and doing business in New Orleans, Louisiana, plaintiff in the above numbered and entitled cause, and says:

That of the 29 day of December, 1915, the District Court of the United States for the Eastern District of Louisiana, entered a judgment herein, signed on Jan. 6, 1916, in favor of defendant, the

American Tobacco Company and against the plaintiff herein, the Peoples Tobacco Company, sustaining exceptions filed by defendant, American Tobacco Company, to the jurisdiction of the United States District Court in and for the Eastern District of Louisiana and dismissing plaintiff's suit.

That in rendering said judgment, the Honorable United States District Court in and for the Eastern District of Louisiana, committed errors to the prejudice of plaintiff herein, all of which will more fully and in detail appear from the assignment of errors filed with and made part of this petition.

That said United States District Court in and for the Eastern District of Louisiana dismissed the suit of the said plaintiff against the said defendant for want of jurisdiction over said defendant, under the Constitution and laws of the United States.

420 Wherefore, this plaintiff, feeling itself aggrieved by the judgment thus rendered dismissing it from Court for want of jurisdiction in the said United States District Court in and for the Eastern District of Louisiana, prays that a writ of error may issue in its behalf out of the Honorable the Supreme Court of the United States, for the correction of the errors complained of, and prays that a transcript of the record, evidence, testimony, proceedings and papers in this cause, duly authenticated, may be sent to the Honorable the Supreme Court of the United States.

Your petitioner further prays that an order be made fixing the amount of surety which petitioner shall furnish upon said writ of error, and that upon giving same, a supersedeas operate in this cause, and the proceedings in this cause be suspended and stayed until the determination of said writ of error by the Honorable the Supreme Court of the United States.

(Signed)

MERRICK, GENSLER & SCHWARZ,

Att'ys for Petitioner.

421 United States District Court, Eastern District of Louisiana.

No. 14369. At Law.

PEOPLES TOBACCO CO. LTD.,

VS.

AMERICAN TOBACCO COMPANY.

Assignment of Errors.

The plaintiff, the Peoples Tobacco Company, Ltd., in this action in connection with its petition for writ of error, makes the following assignment of errors, to-wit:

(1) That the Court erred in sustaining the exceptions to the jurisdiction of the Court, filed by the defendant herein, and in dismissing plaintiff's suit for want of jurisdiction in the Court.

(2) That the Court erred in dismissing plaintiff's suit for want of jurisdiction on the ground that defendant was not served through its

proper representative in the State of Louisiana, so as to be *the* subject to the jurisdiction of the Court.

(3) That the Court erred in dismissing plaintiff's suit for want of jurisdiction on the ground that the defendant was not found within its jurisdiction within the meaning of the Act of Congress known as the Sherman Anti Trust Law.

(4) That the Court erred generally in holding that it was without jurisdiction, under the Constitution and Laws of the United States, over the defendant in this cause and in dismissing plaintiff's suit.

Wherefore, plaintiff prays that the said judgment may be reversed.

(Signed) MERRICK, GENSLER & SCHWARZ,
Att'ys for Petitioner.

422 United States District Court, Eastern District of Louisiana.

No. 14369. At Law.

PEOPLES TOBACCO CO., LTD.,
vs.
AMERICAN TOBACCO COMPANY.

Bill of Exceptions.

Be it remembered that plaintiff having filed its various pleadings and citations having been issued and served, the defendant did on the 15th day of January, 1912, appear especially for the purpose of excepting to said service and objecting to the jurisdiction of this Court, said exception readings as follows:

"Now, through its undersigned attorneys, specially appearing under protest and for the purpose of excepting and objecting to the jurisdiction of this Court and to the false return of the marshal on the citation herein by which it is sought to make it appear that the exceptor has been found within this District, and for no other purpose, comes the American Tobacco Company, defendant in the above entitled and numbered cause, and excepts to the jurisdiction of this Court and says that this Court is without jurisdiction to try this cause, and for grounds of exception avers:

That it appears from the allegations of plaintiff's petition herein, and exceptor avers the fact to be, that exceptor is a corporation created and organized under the laws of the State of New Jersey and is, therefore, a citizen and inhabitant of the State of New Jersey; that it is not and never was a corporation of the State of Louisiana, and is not and never was a citizen or inhabitant of this district or of the State of Louisiana.

423 That, moreover, exceptor has not been and cannot be found within this district for the reason that, and exceptor avers the fact to be that, it is not now, and was not at the date of the institution of his suit, engaged in business in the State of Louisiana and neither has nor had at that time any agent in this State or

district; that the said Irby upon whom the petition and citation in this suit were served, was not either at the date of the institution of this suit or at the date of said service or at any subsequent time the manager or an officer or an agent or an employee of this exceptor and was not authorized to receive service of process for it, and the attempted service on him of said petition and citation does not constitute a finding of exceptor in this district.

That this Court is without jurisdiction *ratione personae*, whether its jurisdiction depends upon exceptor being an inhabitant of this district or whether its jurisdiction depends only upon exceptor being found within this district.

Wherefore, exceptor prays that this exception to the jurisdiction be maintained and plaintiff's suit dismissed for want of jurisdiction."

Thereafter on the 31st day of January, 1912, said defendant appeared herein further for the purpose of excepting to the service made and to the jurisdiction of this Court, said exception reading as follows:

"Now, through its undersigned attorneys, not admitting but denying the jurisdiction of this Court, and appearing specially under protest for the purpose of excepting and objecting to plaintiff's attempt to give this Court jurisdiction by service of process herein on the Secretary of State and of having said service declared illegal and null and without effect to constitute a finding of this defendant within this district, comes the American Tobacco Company, defendant, and for cause of exception says:

That since the filing of the exceptions herein on January 15, 1912, plaintiff has caused the citation and copy of the petition herein to be served on the Secretary of State of Louisiana at Baton Rouge; that service of process as aforesaid on the said Secretary of State, is unauthorized by law and void and without effect; that exceptor repeats and re-iterates the averments of fact contained in its said first exception herein filed, namely: That it is a corporation created and organized under the laws of New Jersey and is an inhabitant of said State, and is not an inhabitant of this District or of the State of Louisiana; that it was not at the date of the institution of this suit or at any subsequent time, engaged in any business in this District or State.

Wherefore, exceptor prays that its exceptions be maintained, the attempted service of process herein on the Secretary of State be decreed invalid, null and void and without effect, and that plaintiff's suit be dismissed for want of jurisdiction."

That thereafter on the 17th day of February, 1914, said defendant appeared herein further for the purpose of excepting to the service made and to the jurisdiction of this Court, said exception reading as follows:

"Now, through its undersigned attorneys, not admitting but denying the jurisdiction of this Court and appearing specially under protest for the purpose of excepting and objecting to plaintiff's attempt to give this Court jurisdiction by service of process herein on the Secretary of State and of having said service declared illegal and null and without effect to constitute a finding

of this defendant within this district, comes the American Tobacco Company, defendant and for cause of exception says:

That since the filing of the exceptions herein on January 15, 1912, and on the 31 day of January, 1912, plaintiff has caused a new citation and copy of the petition to be served on the Secretary of State of Louisiana, at Baton Rouge; that service of process as aforesaid on the said Secretary of State is unauthorized by law and void and without effect; that exceptor repeats and re-iterates the averment of fact contained in its said first exception herein filed, namely; That it is a corporation created and organized under the laws of New Jersey and is an inhabitant of that State and is not an inhabitant of this district or of the State of Louisiana; that it was not at the date of the institution of this suit or at any subsequent time engaged in any business in this district or State.

Wherefore, exceptor prays that its exceptions be maintained, the attempted service of process herein on the Secretary of State be decreed invalid, null and without effect, and that plaintiff's suit be dismissed for want of jurisdiction.

And subsequently said exceptions having been called for hearing on the 18th of December, 1914, before the Court, the Honorable

426 Rufus E. Foster, Judge, the testimony of witnesses and evidence, documentary and otherwise, was heard by the Court, all of which testimony, evidence, papers, proceedings and records are attached hereto and made part of this bill of exceptions.

And afterwards on the 29th day of December, 1915, the Court rendered its judgment, signed on the 6th of January, 1916, sustaining the said exceptions filed by the defendants and dismissing the suit for want of jurisdiction, which opinion and the judgment of the Court, entered accordingly are, likewise made part hereof.

To which action, ruling and judgment of the Court, plaintiff excepts, and tenders this, its bill of exceptions, and prays that the same may be signed, sealed and allowed, which, accordingly, is done at New Orleans, Louisiana, this 17th day of January, 1916.

(Signed)

RUFUS E. FOSTER, *Judge.*

Jan. 17, 1916.

427 United States District Court, Eastern District of Louisiana.

No. 14369. At Law.

PEOPLES TOBACCO CO., LTD.,

vs.

AMERICAN TOBACCO COMPANY.

Order.

On this 17th day of January, 1916, comes plaintiff, the Peoples Tobacco Company, Ltd., a corporation created and organized under the laws of the State of Louisiana, and doing business at New Or-

leans, Louisiana, through its attorneys, Merrick, Gensler & Schwarz, and files herein and presents to the Court its petition for the allowance of a writ of error from the judgment of this Court, dismissing plaintiff's petition for want of jurisdiction in this Court, and accompanying petition for writ of error with an assignment of errors intended to be urged by it, and said petitioner further praying that a transcript of the record, evidence, testimony, proceedings and papers, upon which the judgment was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and petitioner further praying for an amount of bond to operate as a supersedeas and for such other and further proceedings as are necessary or proper in the premises.

On consideration whereof, the Court does allow the writ of error, and upon plaintiff giving bond, according to law in the sum of \$200.00 same shall operate as a supersedeas bond.

New Orleans, Louisiana, 17 January, 1916.

(Signed)

RUFUS E. FOSTER, *Judge.*

428 United States District Court, Eastern District of Louisiana.

No. 14369. At Law.

PEOPLES TOBACCO Co., LTD.,

vs.

AMERICAN TOBACCO COMPANY.

Certificate by the Court.

In this case, which is a suit by the plaintiff against the defendant under the Act of Congress known as the Sherman Anti Trust Law, I hereby certify that the order of dismissal herein made, is based solely on the ground that this Court has no jurisdiction over the defendant under the Sherman Anti Trust Law, defendant not being found within the jurisdiction of this Court and no service being made upon any agent authorized to receive service, and the exceptions of the defendant appearing specially to plead to the jurisdiction, being considered, I find that said exceptions to the jurisdiction should be sustained and the case dismissed for want of jurisdiction in this Court.

The question of jurisdiction is the only question considered, and this certificate is made in conformity with Section 238 of the Judicial Code of the United States (Act March 3, 1911, Chapter 231, 36 Statutes at Large, 1087-1169).

The opinion of the Court is made part of the record and will be certified and sent up as part of the proceedings together with said certificate.

New Orleans, Louisiana, this 17 day of January, 1916.

(Signed)

RUFUS E. FOSTER, *Judge.*

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Bond for Writ of Error.

Filed January 20, 1916.

Know all Men by these Presents, That we, the Peoples Tobacco Company, Ltd., as principal, and Joseph Oury, as sureties, are held and firmly bound unto the American Tobacco Company in the full and just sum of two hundred (\$200.00) dollars to be paid to the said American Tobacco Company, certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of January in the year of our Lord, one thousand nine hundred and sixteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between Peoples Tobacco Company, Ltd., vs. American Tobacco Company a judgment was rendered against the said Peoples Tobacco Company, Ltd., and the said Peoples Tobacco Company, Ltd., having obtained writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said American Tobacco Company citing and admonishing it to be and appear before the United States Supreme Court within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Peoples Tobacco Co., Ltd., shall prosecute writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed)

PEOPLES TOBACCO CO., LTD.

J. OURY, *President.*

[SEAL.]

(Signed)

JOSEPH OURY, *Surety.*

[SEAL.]

Sealed and delivered in presence of—

— — —
— — —

Approved by—

(Signed) RUFUS E. FOSTER, *Judge.*

UNITED STATES OF AMERICA,

Eastern District of Louisiana, ss:

Personally appeared, Joseph Oury, who being duly sworn (deposes and says that he is the surety on the within bond, that he resides in the City of New Orleans, State of Louisiana, and is worth the full sum of Two Hundred (\$200.00) Dollars *Dollars*, over and above all his debts and liabilities and property exempt from execution.

(Signed)

JOSEPH OURY.

Subscribed and sworn before me this 19th day of January, 1916.

(Signed)

PHILIP GENSLER, JR.,

[SEAL.]

Notary Public.

430

Præcipe for Transcript.

Filed February 1st, 1916.

Letterhead of Merrick, Gensler & Schwarz.

NEW ORLEANS, Jan. 29, 1916.

Mr. Harry J. Carter, Clerk of Court, City.

DEAR SIR: In the matter of the Peoples Tobacco Company, Ltd., vs. American Tobacco Company, we beg to confirm our verbal request that in making up this record for the Supreme Court of the United States, you will please be good enough to include all pleadings, testimony and exhibits offered in the trial, with the following exceptions:

You need not include the printed decree of the Federal Court nor the printed petition and answer in the original suit of the Government against the American Tobacco Company. As to the printed volume of Government regulations of July 1st, 1910, you need include nothing except the following:

The title page and the parts marked in the following way: # #

On page 3, Secs. 26 and 35 as indicated by the Mark "#." On page 4 Section 5. On page 5 Sections 9 and 12. On page 13, paragraph entitled "Branch-Leaf-Tobacco Warehouses," and on page 27, paragraph "Incorporated Companies." No other portions of that printed volume need be included.

431

Yours very truly,

(Signed)

MERRICK, GENSLER & SCHWARZ.

S.—P. C.

432

Letter of Merrick, Gensler & Schwarz.

Filed February 9, 1916.

(Letterhead of Merrick, Gensler & Schwarz.)

New Orleans, 2/9/16.

Harry J. Carter, Esq., Clerk U. S. Court, Customhouse Bldg., New Orleans, La.

DEAR SIR: This is to confirm the verbal advice heretofore given you that the letter which we addressed to you, to serve as *Præcipe* in the matter of the People's Tobacco Company Ltd. vs. American Tobacco Company, No. 14369, was served on opposing counsel, Mr. Denegre, on January 31st, 1916. We sent to Mr. Denegre, who received it, copy of the letter which we sent to you to serve as *præcipe* in the above matter.

If you desire additional proof of this fact, by way of affidavit, the writer will be pleased to make affidavit to that effect. This notice is given in order to comply strictly with the rule of the Supreme Court on the subject.

Yours very truly,
(Signed) MERRICK, GENSLER & SCHWARZ.

S./V.

433 *Motion and Order Extending the Return Date on Writ of Error.*

Filed February 9th, 1916.

United States District Court, Eastern District of Louisiana.

No. 14369.

PEOPLE'S TOBACCO COMPANY, LTD.,

vs.

AMERICAN TOBACCO COMPANY.

On motion of the People's Tobacco Company Ltd., through Merrick, Gensler & Schwarz, its attorneys, and on showing to the Court,

That plaintiff and appellant has been advised by the Clerk of this Court that owing to the different transcripts which he has to prepare, and owing to their size and length, it will be impossible for him to prepare the transcript in this case, in time to be submitted to the Honorable the Supreme Court of the United States, within the return date required by law, and

On further suggesting to the Court that said Clerk of Court will require an additional period of thirty (30) days within which to prepare said transcript, so that the same may be lodged with the Honorable the Supreme Court of the United States, as appears from certificate from said clerk, hereto attached and made a part of this motion, and,

On further showing to the Court that in accordance with Rule No. 9, of the Supreme Court of the United States, mover, upon the above facts being brought to its attention, desires this Hon-

434 orable Court to enter an order to enlarge the time for docketing and filing the record in this cause, for a period of thirty (30) days from the expiration of the order heretofore granted in this cause.

It is ordered by the court, the premises and the annexed certificate from the clerk of this Court considered, that the return date on the appeal granted in this cause, which would expire under the original order on February 16th, 1916, be and it is hereby extended for good cause shown, for a period of thirty days from said date.

February 9th, 1916.

(Signed)

RUFUS E. FOSTER, Judge.

- 435 *Letter from Messrs. Merrick, Gensler & Schwarz, Attorneys,
In re Printed Decree to be Included in Transcript.*

Filed March 1, 1916.

(On Letterhead of Merrick, Gensler & Schwarz.)

New Orleans, 3/1/16.

Clerk United States District Court for the Eastern District of Louisiana, Post Office Building, New Orleans, La.

DEAR SIR: We are handing you herewith the printed decree, in the matter of the Circuit Court of the U. S., for the Southern District of New York, in the case of the United States of America vs. American Tobacco Company. This copy was sent us by Mr. Denegre. He desires this decree included in the transcript, in the matter of the People's Tobacco Company Ltd. vs. the American Tobacco Company, now being prepared by you, for the Supreme Court of the United States.

Will you please be good enough to see that this decree conforms with the one offered in evidence.

We do not include this in the præcipe for the reason that in our opinion, it is included in the reported case in the Federal Reporter, and therefore ought not to be in this transcript. At the same time counsel on the other side has instructed you to include it, and so we send it to you herewith for that purpose.

Yours very truly,

(Signed) MERRICK, GENSLER & SCHWARZ.

S./V.

Enc.

- 436 *Letter from Messrs. Denegre, Leovy and Chaffe In re Certain
Document to be Included in Transcript.*

Filed March 9th, 1916.

(On letter head of Denegre, Leovy & Chaffe.)

8516

NEW ORLEANS, March 8, 1916.

PEOPLES TOBACCO COMPANY
vs.
AMERICAN TOBACCO COMPANY.

Henry J. Carter, Esq., Clerk, United States District Court, New Orleans:

DEAR SIR: Mr. Schwarz has sent us a copy of his instructions to you for preparing the record of appeal in the case of Peoples Tobacco Company vs. American Tobacco Company.

We desire the transcript to include the copy of the decree of the United States Circuit Court in the Government dissolution suit which we offered in evidence.

As to the bill of complaint and answer in the Government suit for dissolution, and the printed pamphlet of regulations, offered in evidence by the Peoples Tobacco Company, we do not now require their inclusion into the record, reserving our right to bring them up later should we see fit. We understand that you have been instructed by counsel for the complainant to include everything else offered in evidence by either side and all of the testimony taken in the case.

Yours very truly,

(Signed)

DENEGRE, LEOVY & CHAFFE.

GD.B.

436a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana,
New Orleans Division.

CLERK'S OFFICE.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 436 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and proceedings in the case of the Peoples Tobacco Company, Limited versus The American Tobacco Company, No. 14369 of the Docket of the District Court of the United States, Eastern District of Louisiana, New Orleans Division (made in accordance with the præcipe for transcript and letters, copied herein in said transcript).

Witness my hand and the seal of said Court at the City of New Orleans, Louisiana, this 9th., day of March, A. D., 1916.

[Seal U. S. District Court for the Eastern District of Louisiana, N. O. Div.]

H. J. CARTER, *Clerk*.

436b THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to American Tobacco Company,
Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Peoples Tobacco Company, Limited, is Plaintiff in Error, and American Tobacco Company, is Defendant in Error, in the suit entitled: Peoples Tobacco Company, Limited, versus American Tobacco Company,

No. 14,369 of the docket of the United States District Court for the Eastern District of Louisiana, New Orleans Division, to show cause, if any there be, why the judgment rendered against the said Peoples Tobacco Company, Limited, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 17th day of January in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. District Court for the Eastern District of Louisiana, N. O. Div.]

(Signed)

RUFUS E. FOSTER,

Judge.

CLERK'S OFFICE:

A true copy.

H. J. CARTER,

Clerk.

New Orleans, La., January 17th, 1916.

Received by U. S. Marshal, New Orleans, La., January 17/16. And on Jan. 21st, 1916, I served the original of which this writ is a certified copy by handing same to Geo. Denegre a member of the firm of Denegre, Leovy and Chaffe, in person, in his office in the city of New Orleans, La.

FRANK M. MILLER,

Marshal.

By A. H. VENET,

Deputy Marshal.

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. No. 14,369. Peoples Tobacco Company, Limited, vs. American Tobacco Company. Citation on Writ of Error. Marshal's Return. No — U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Jan. 25, 1916. Hy. J. Loisel, Dep. Clerk.

437 UNITED STATES OF AMERICA, SS:

The President of the United States, to the Honorable the Judge of the District Court of the United States for the Eastern District of Louisiana. Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Peoples Tobacco Company, Limited, plaintiff, and American Tobacco Company, defendant, No. 14,369 of the docket of the United States District Court for the Eastern District of Louisiana a manifest error hath happened, to the great damage of the said Peoples Tobacco Company, Limited, as by its complaint appears.

We being willing that error, if any hath been, should be duly cor-

rected, and full and speedy justice done to the parties af resaid, in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C. within 30 days from the date hereof, in the said Supreme Court of the United States, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what, of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the said Supreme Court of the United States, this 17th day of January in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. District Court for the Eastern District of Louisiana, N. O. Div.]

H. J. CARTER,

*Clerk of the United States District Court
for the Eastern District of Louisiana.*

Allowed by

RUFUS E. FOSTER, *Judge.*

[Endorsed:] United States District Court, No. 14,369. Peoples Tobacco Co. Ltd., versus American Tobacco Company. Writ of Error. No. — U. S. District Court Eastern District of Louisiana, New Orleans Division. Filed Jan. 37, 1916. H. J. Carter, Clerk.

Endorsed no cover: File No. 25,180. E. Louisiana D. C. U. S. Term No. 897. Peoples Tobacco Company, Limited, plaintiff in error, vs. American Tobacco Company. Filed March 13th, 1916. File No. 25,180.



FILED
NOV 22 1917

JAMES D. WAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

No. 124.

OCTOBER TERM, 1917.

PEOPLES TOBACCO COMPANY, LIMITED,
Plaintiff in Error,

versus

AMERICAN TOBACCO COMPANY,
Defendant in Error.

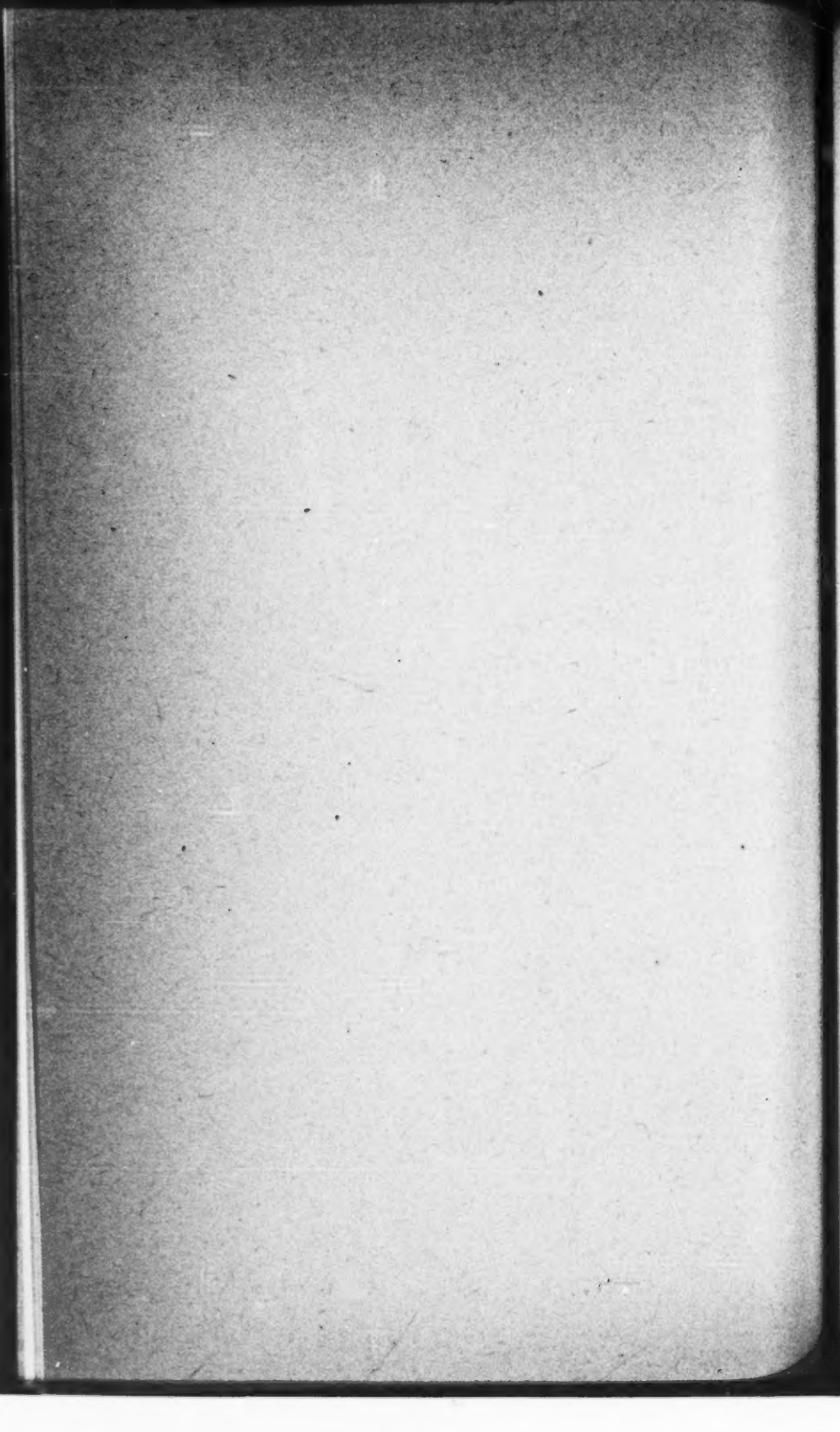
In Error to the District Court of the United States for
the Eastern District of Louisiana.

Brief of Plaintiff in Error.

EDWIN T. MERRICK,
RALPH J. SCHWARZ,

Of Counsel.

October 31, 1917.



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SUPREME COURT OF THE UNITED STATES

No. 124.

OCTOBER TERM, 1917.

PEOPLES TOBACCO COMPANY, LIMITED,
Plaintiff in Error,

versus

AMERICAN TOBACCO COMPANY,
Defendant in Error.

**In Error to the District Court of the United States for
the Eastern District of Louisiana.**

Brief of Plaintiff in Error.

STATEMENT OF CASES.

The Peoples Tobacco Company, Limited, on August 29, 1911, having a suit pending in the United States District

Court against the American Tobacco Company for damages for certain acts done by the latter company, conspiring with Augustus Craft, and the Craft Tobacco Company, Limited, and others, to destroy competition in violation of the Sherman Act filed a second supplemental petition alleging damages accruing subsequent to the filing of the original petition. A long period had elapsed between the filing of the original suit and its actual trial (203).

This supplemental petition was served on the 30th day of August, 1911, on the agent of defendant, W. R. Irby, the same person served in the present suit (217).

This supplemental petition on an exception of defendants in error, was dismissed November 10, 1911 (221).

The present suit setting out the same causes of action was filed on January 4, 1912 (1).

The petition in this case was served on the American Tobacco Company, by delivery to and service on W. R. Irby, its manager, on January 5, 1912 (21, 22).

On January 16, 1912, the defendant in error, the American Tobacco Company, excepted to the service on the ground substantially:

1st. That it was a New Jersey corporation, and is not and never was a citizen or inhabitant of the Eastern District of Louisiana or of the State of Louisiana.

2nd. That defendant in error is not and was not at time of institution of suit engaged in business in Louisiana and has not nor did it have at said time any agent upon whom the petition and citation could be served nor had it any manager, officer, agent or employee authorized or competent to be served and that the service on W. R. Irby did not constitute a finding of defendant within the district.

3rd. That the lower Court was without jurisdiction *ratione personae* whether jurisdiction depended on defendant in error being an inhabitant of the district or whether jurisdiction depended only upon exceptor being found within the district (22 and 23). This exception was filed January 16, 1912.

Subsequently on January 21, 1912, a copy of the petition and citation was also served by the Marshal on the **Assistant Secretary of State** (23).

And on January 31, 1916, the defendant in error excepted to the service, alleging substantially the service referred to and averring that the service was unauthorized by law, void and no effect. The exception reaffirms and reiterates the previous exceptions (25).

On February 2, 1914, another service was made on the Secretary of State (25) and substantially the same exception was on February 17, 1914, filed in the case (26).

Service was made also on President of the company by registered mail sent by the Clerk of the United States Court (223).

Considerable evidence was taken on the trial and the case was submitted to the trial Judge on December 19, 1914 (28).

The **succeeding year**, December 29, 1915, the trial Judge sustained the exception and dismissed plaintiff's petition (261).

An application for a rehearing was refused (263) plaintiff applied for and obtained a writ of error to the Supreme Court of the United States.

In the consideration of this case it is now unnecessary to discuss the nature of the causes of action set out as the

sole question in the lower and in this Court is: had the lower Court jurisdiction of the present suit.

SPECIFICATIONS OF ERROR.

The errors assigned:

1st.

That the Court erred in sustaining the exceptions to the jurisdiction of the Court filed by the defendant in error and in dismissing plaintiff's suit for want of jurisdiction in the Court.

2nd.

That the Court erred in dismissing plaintiff's suit for want of jurisdiction on the ground that defendant was not served through its proper representative in the State of Louisiana, as to be subject to the jurisdiction of the Court.

3rd.

That the Court erred in dismissing plaintiff's suit for want of jurisdiction on the ground that the defendant was not found within its jurisdiction within the meaning of the Act of Congress known as the Sherman Anti-Trust Law.

4th.

That the Court erred generally in holding that it was without jurisdiction under the Constitution and laws of the United States over the defendant in this cause and in dismissing plaintiff's suit.

I.

The first question presented to this Court is whether, under the facts in this record, the defendant, the American Tobacco Company, was "found" in the State of Louisiana, within the meaning of the Sherman Anti-Trust Act.

That the law in giving jurisdiction under that act to the Court where the injury was committed, intended to go further than the general law, is evidenced by the fact that jurisdiction of the United States Courts usually depends upon whether the defendant is an inhabitant or resident of the district where the suit is brought. When, therefore, the Sherman Anti-Trust Act provides (Section 7) that a defendant violating that act might be served where "found," it is apparent, we submit, that whether the defendant resided in or inhabited the district, or even whether it had an agent in the district, is not the test. The test would seem to be whether the defendant violating this law may by fair and reasonable process, be located and reached in the State and district where the injury was committed, without regard to the presence of an agent in the State, designated as such.

Act 149 of 1890 of the laws of Louisiana reads as follows :

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be the duty of all corporations, domiciled out of the State, doing business in the State, excepting mercantile corporations, to file in the office of the Secretary of State a declaration of the place of locality of its domicile, together with the name of its agent or officer in the State representing said corporation upon whom service of process can be made.

"Section 2. Be it further enacted, etc., Whenever any such corporation shall do any business of any **nature whatsoever** in this State, without having complied with the requirements of section one of this act, it may be sued upon any cause of action in the parish, **where the right or cause of action arose**, and service of process may be made **upon the person or persons, firm or company, acting or transacting such business** for such corporation, and each person or persons, company, or firm shall be deemed the agent of said corporation upon whom service can be made."

With this act in force, defendant company entered the State of Louisiana, actually designated an agent therein and actually did business therein for many years. It thus came into the State accepting the terms of this statute. Its business was **carried on and transacted** by Mr. Irby and the Irby Branch of the American Tobacco Company. In the petition now before this Court, filed by plaintiff herein, it will be seen that Mr. Irby and the Irby Branch of the American Tobacco Company were part of the means whereby the conspiracy and restraint of trade were carried on in Louisiana, to the injury of the plaintiff. They were the ones concededly who **transacted** the business for and **acted for**, the American Tobacco Company in Louisiana, under the terms of the foregoing statute, and were **so acting when the cause of action herein sued upon arose**. Hence, we submit, that the defendant may be "found" within the State, by service upon the one thus transacting its business. The effect of the statute, above, according to which the defendant company entered the State of Louisiana, and did business, cannot be defeated by an alleged telegraphic

revocation of the authority of Mr. Irby to accept service for the defendant company, quite aside from the fact, as pointed out herein otherwise, that such telegraphic revocation of authority was made by a vice-president of the American Tobacco Company, and not by or under the direction of its board of directors, and, according to the vice-president's own testimony, a ratification would seem to have been necessary, but was never given, so as to have given even the formal legal sanction necessary to have effected that revocation.

In the case of *American Cotton Company v. Beasley*, 116 *Federal*, 256, the Circuit Court of Appeals for the Fifth Circuit (Louisiana included) had occasion to pass on this Statute 149 of 1890, and there squarely held that service upon the person who had *transacted* the business was sufficient to bring the defendant within the jurisdiction of the Court. The syllabus reads as follows:

"1. Foreign Corporations. Jurisdiction of Suit Against. Louisiana Statute. Acts La. 1890, No. 149, requires foreign corporations doing business in the State to file a declaration with the Secretary of State, in which an agent shall be designated on whom process can be served. It further provides that any such corporation doing business in the State without complying with such requirement may be **sued on any cause of action in the parish where the cause arose**, 'and the service of process may be made on the **person, firm or company acting, or transacting such business** for said corporation, and each person or persons, company or firm, shall be deemed the agent of said corporation upon whom service can be made.' *Held*, that a State Court of a parish in which a transaction with such a corpora-

tion which had not filed the required declaration occurred, had jurisdiction of a suit growing out of such transaction, although service was made upon an agent other than the one who acted for the corporation in the transaction."

The terms of this Louisiana statute are in strict accordance with the requirements of the Constitution of the United States as to service of process on foreign corporations, as expressly approved by this Court. In the case of *St. Clair v. Cox*, 106 U. S., 350, this Court says the following, at page 356:

"The State may, therefore, impose as a condition upon which a foreign corporation shall be permitted to do business within her limits, that it shall stipulate that in any litigation arising out of its transactions in the State, it will accept as sufficient the service of process on its agents or persons specially designated; and the condition would be eminently fit and just. And such condition and stipulation may be implied as well as expressed. If a State permits a foreign corporation to do business within her limits, and at the same time provides that in suits against it for business there done, process shall be served upon its agents, the provision is to be deemed a condition of the permission; and corporations that subsequently do business in the State are to be deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of the process."

The condition imposed by the State of Louisiana, under Act 149 of 1890, above cited, is in direct accordance with the language quoted from this Court, and this Court specifically held in the above case that such a condition "would be emi-

nently fit and just." Your Honors said that a corporation which after such a statute does business in the State is deemed to assent to such a condition pronounced eminently fit and just, just as fully as if they had specially authorized their agents to receive service of process.

We submit, therefore, that as to the cause of action here involved, which arose concededly prior to the alleged withdrawal of the authority of the agent to accept service, and while the company had a designated agent in Louisiana and was doing business here, the defendant is "found" within the meaning of the Sherman Anti-Trust Act, within this State, when the person acting for and transacting the business out of which the cause of action arose was served here, since that is in entire accordance with the terms of the statute of Louisiana under which the defendant entered the State and carried on its business here and is in entire harmony with the rule laid down by this Court in *St. Clair v. Cox*, *supra*.

We submit, therefore, that it is immaterial whether Mr. Irby's agency was revoked technically or not when the service of process was made on him, and it is immaterial whether at or subsequent to that time, the defendant did business here, since under the statute and the facts above set forth, the defendant would be "found" here by service upon the person who had transacted the business here when the cause of action arose, **and that person was the one served with process.**

II.

The defendant, on the other hand, contends that it is subject to service in Louisiana only if it can be shown to

have done business in the State of Louisiana, after the alleged revocation of the authority of Mr. Irby, which was in December, 1911. Meeting them on this test, we respectfully submit that the facts in this record show that **the defendant was doing business in the State of Louisiana so as to be "found" within that State, within the meaning of the Sherman Anti-Trust Act.** This we think is established by the following facts, for verification of which we refer to the printed pages of the record.

(1) The defendant company had its agents and salesmen actively soliciting trade and selling and delivering goods in the State of Louisiana, at and subsequent to the time of service of process upon Mr. Irby in this case, in the same manner as prior to the service of that process. (See record, page 42, where Mr. Irby testifies that the company did business right along, after as before; see also record, page 42; record, bottom page 123, top page 124; record, middle page 128, last answer of the examination of Hamilton Guenard.)

(2) The defendant's agents and representatives took orders and turned them in to local jobbers in New Orleans to be filled. This was done at the time of the service of process and subsequent thereto, just in the same manner as it had been done by the American Tobacco Company prior thereto (See record, page 115; see also admission, bottom page 117, and admission, page 118.)

(3) The defendant company issued circulars at the time of the service of process herein, and subsequently thereto, just as it had done previously to that time. (See record, page 231, entitled "Leaflet;" see also record page 243 and page 245, and specially page 248.)

(4) The defendant company advertised in the local newspapers at New Orleans, as evidenced by advertisement in the New Orleans Times-Picayune, copied in this record. (See record, page 202.)

(5) Bills were sent out and payments received by the Irby Branch of the American Tobacco Company subsequent to the alleged revocation of Mr. Irby's authority, and at and subsequent to the time of service of process herein. To the extent to which this was done, the Irby Branch was continuing to act as collecting agent of the American Tobacco Company. (See record, bottom page 119; see bills sent out after service of process, record, pages 158, 159, 171, 192; see bills sent out just prior to the service of process, but after alleged revocation of authority of agent, record pages 182, 183, 187, 190.)

(6) There was money due and owing to the American Tobacco Company on notes made by the Crescent Cigar & Tobacco Company, a tobacco company of New Orleans, Louisiana. (See record, page 125.)

(7) It is conceded that there remained on hand (and the evidence clearly establishes it) with the Irby Company, at and after the time of the alleged revocation of authority, and at and after the time of the service of process herein, quantities of cigarette paper belonging to the American Tobacco Company, known as Riz La Croix, which quantities were disposed of by the Irby Branch on account and for the benefit of the American Tobacco Company. (See record, page 106; record, bottom page 109; record, last line, page 135, and top of page 136, and record, page 110, **showing good stock on hand.**)

(8) There was lodged in the Customhouse at New Orleans, powers of attorney from the American Tobacco Com-

pany giving authority to those in whose favor the powers of attorney issued, to do what was necessary in making out the export papers on behalf of the company. These powers were not revoked, and were in existence after the alleged revocation of authority, and at and subsequent to the time of service of process herein. (See record, top page 147; see admission, bottom page 147.)

(9) It may also be mentioned that the Havana American Tobacco Company, a subsidiary of the American Tobacco Company, was during all this period of which we have been speaking, actually located in; had a plant, and was carrying on business, in New Orleans, Eastern District of Louisiana; that it received and filled orders for the American Tobacco Company. (See record, bottom page 140, top page 141, and particularly 142.)

Briefly speaking, this is the substance of most of the facts brought out in this record, and we submit, they are sufficient to show that the American Tobacco Company was doing business in the State of Louisiana, at the time of service of process, if that be an essential test under the circumstances, of this case, in order to make it "found" within the State. Indeed, we doubt if the fact that the American Tobacco Company was doing business in the State of Louisiana will be disputed by counsel for defendant, with the record in this case before them. Their point before the Court below was that the business, if done, was interstate in character, and consequently did not make the defendant "found" within the jurisdiction. To this proposition we have two answers:

First, the business was not purely interstate in character. We think it unnecessary to detail those elements of the foregoing recital of business done, in order to point out that

it cannot be said that it was a purely, and only interstate business.

Second, whether interstate in character or not, the fact that the business was actually being done in Louisiana makes the company subject to process and makes it "found" within the State, within the meaning of the law, even though the business may be interstate in character. While the State might not be able to prevent such business or might not be able to burden it with licenses or taxation, because such act would be violative of the Constitution of the United States, nonetheless, such acts constitute doing business within the State and subject the defendant to service within the State as being "found" therein.

This doctrine, we think, is announced in two decisions of this Honorable Court. In the case of the *International Text Book Company v. Pigg*, 217 U. S., 91, your Honors, at page 105, said:

"In view of the agreed facts and the principles announced both by the Kansas Supreme Court and by this Court we hold that, within the meaning of Section 1283 of the Kansas statute, the International Textbook Company **was doing business in the latter State at the time the contract in question was made**, and was therefore within the terms of that section."

Here the business was purely of an interstate character.

In the subsequent case of *International Harvester Company v. Commonwealth of Kentucky*, 234 U. S., 579, this Court, at page 585, says:

"* * * Here was a continuous course of business in the **solicitation of orders** which were sent to

another State and in response to which the machines of the Harvester Company were delivered within the State of Kentucky. ***This was a course of business, not a single transaction.***

At page 589, the Court says:

“* * * We are satisfied that the presence of a corporation within a State necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the State, ***although the business transacted may be entirely interstate in its character.***”

We, therefore, submit to the Court that both under the Louisiana statute under which the defendant entered and did business here, as well as under the general doctrines of law, as to what constitutes doing business within the State, defendant was “found” within the State of Louisiana, within the meaning of the Sherman Anti-Trust Act, and service of process, as made, should be sustained, and the judgment of the Court below reversed.

III.

It is admitted that Mr. Irby (the person served) was for many years a designated agent and representative of defendant company in the State of Louisiana. He was formally appointed by resolution of the board of directors, which we here quote in full:

“357. Copy of Resolution Passed at the Meeting of the Board of Directors of the American Tobacco Company, held April 19th, 1899:

"Resolved, That this company hereby authorizes and empowers its president or vice president, and secretary by written power of attorney, under its corporate seal, to make, constitute and appoint W. R. Irby, agent of this company in the State of Louisiana, upon whom service of process may be made, and which said agent shall be, and is hereby authorized to enter appearances in behalf of this company and to receive and accept service of process in all legal proceedings against this company within the State of Louisiana, and this company does further hereby declare its domicile and place of business in the State of Louisiana, in so far as it **has** by the laws of said State required to have and declare the same, to be in the City of New Orleans, Parish of **New Orleans**.

"The undersigned, Josiah Browne, Secretary of the American Tobacco Company, hereby certifies that the foregoing is a true copy of a resolution adopted by the board of directors of said company, held on the 19th day of April, 1899.

"JOSIAH BROWNE, Secretary."

"358.

Power of Attorney

"Know all men by these presents: That the American Tobacco Company, a corporation organized under the laws of the State of New Jersey, hereby constitutes and appoints W. R. Irby of New Orleans, Louisiana, a resident of said State, its agent, upon whom may be served all lawful process against said company, and he is hereby authorized to enter appearance and to receive and accept service of process in all legal proceedings against said company within the State of Louisiana.

"And said company further declares that its domicile and place of business, in so far as it is by the laws of the State of Louisiana required to have or declare the same in said State, is in the City of New

Orleans, Parish of Orleans, in which city it has established an office at Nos. 400 to 414 South Peters Street.

"In testimony whereof the said company, in pursuance of the resolution of its board of directors, duly passed on the 19th day of April, a certified copy of which is hereto attached, has caused its corporate seal to be hereto attached, and these presents to be subscribed by its president and secretary, in the City of New York, State of New York, this 19th day of April, 1899.

"THE AMERICAN TOBACCO CO.,

"(Seal)

By J. B. Duke, President.

"Attest:

"JOSIAH BROWNE, Secretary.

"Witnesses:

"JAMES M. RHETT,

"EDWARD C. REICHTER."

"359.

State of New York,

"City and County of New York—ss.

"On this 19th day of April, 1899, before me, the undersigned authority, personally came and appeared J. B. Duke, president of the American Tobacco Company, and Josiah Browne, secretary of said company, with both of whom I am personally acquainted, who each being duly sworn, say that they and each of them reside in the City of New York; that they are respectively the president and secretary of the American Tobacco Company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that they signed said instrument respectively as president and secretary of said company by like author-

ity; and they and each of them did further declare that they are the officers of said company respectively as aforesaid, and that their respective signatures subscribed to said instruments are their genuine signatures thereto subscribed by them for the uses and purposes in said instrument set forth.

"All of which is declared by J. B. Duke and Josiah Browne, in my presence, and in that of the two witnesses whose names are to said instrument and also hereto subscribed as such together with me, J. J. O'Keefe, Notary Pub. as aforesaid.

"(Seal)

JOHN J. O'KEEFE,

"Notary Public in and for the City and County of New York.

"JAMES M. RHETTE.

"EDWARD C. REICHTER.

"Internal Revenue Stamp, Cancelled."

(229 and 230)

How was the agency thus formally crated attempted to be revoked? We say "attempted to be revoked," because we do not think an effective legal revocation was accomplished.

The so-called revocation of the power of attorney is merely a statement by Percival S. Hill, a vice-president, and J. K. Groyun, assistant secretary, that the American Tobacco Company has revoked authority of its resident agent and that the corporation has caused its seal and name to be subscribed.

This statement is shown by the evidence to be untrue.

The corporation never considered the revocation of the power of attorney; as we propose to show the Court. Here is the form of the alleged revocation:

"144. Know all men by these presents: That the American Tobacco Company, a corporation organized and existing under the laws of the State of New Jersey, with its principal office at 110 First Street, Jersey City, and office at 111 Fifth Avenue, New York City, having disposed of all of its property in the State of Louisiana and ceased to do business in said State, has revoked authority of its resident agent in said State of Louisiana, and does hereby revoke the authority of said agent and cancel and annul his appointment as such agent.

"In testimony whereof, said The American Tobacco Company has caused its corporate name to be hereunto subscribed and its corporate seal to be heretofore affixed, this 1st day of December, 1911.

"(Signed) "THE AMERICAN TOBACCO CO.,

"By Percival S. Hill,

"(Seal)

Vice President.

"Attest: (Signed) J. K. GROYN,
Ass't Secretary.

"State of New York,

"County of New York—ss.

"I, R. J. Boylan, a Notary Public in and for the county and State aforesaid, do hereby certify that Percival S. Hill and J. K. Groyun, whose names are signed to the foregoing instrument, are personally known to me and known to me to be the vice-president and secretary respectively of the American Tobacco Company, the corporation mentioned in said instrument, and that each of said persons

145 personally appeared before me in my said county, and being duly sworn, on oath, did say that they are the vice president and secretary respectively of said corporation; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; and they

signed, sealed and executed the aforesaid instrument as the act and deed of said corporation.

"Witness my hand and official seal this 1st day of December, 1911.

'(Signed)

R. J. BOYLAN,

("Seal)

Notary Public, No. 200."

(83 and 84)

We think it will scarcely be denied that the action of the board of directors can not be set aside by a vice president of the company without some evidence better than has been shown in this record that the vice president had the power to annul a formal resolution of the board of directors.

Mr. Hill, the vice-president, claimed when on the witness stand in the trial of this case that his revocation of Mr. Irby's power of attorney was **confirmed by the board of directors**, thus admitting the necessity for such authority.

But in this it is now admitted Mr. Hill was mistaken.

Q. Will you show me your minutes where your board of directors ever authorized you to revoke the power of attorney of the corporatin, Mr. Hill?

A. I can show you the minutes **wherein the action of revoking the power of attorney was confirmed. THERE ARE NO MINUTES INDICATING IT IS MY DUTY.**

Q. When was your revocation of the power of attorney affirmed?

A. I **presume** at the first meeting after the first of December.

Q. When was that first meeting held—will you produce your minutes so I can see.

A. Will you leave that date blank, because the minute book will show it?

Q. I will have to see the minute book, yes. It was in December was it not?

A. No. I'm quite sure it was not in December. (75).

When the secretary was called to prove the minutes he showed Irby's resignation had not been mentioned at any meeting, even subsequent to the alleged revocation.

Q. Will you look through your minutes, from the 1st day of December to the 10th day of January, and let me know if at any time in that period an alleged revocation of a power of attorney to W. R. Irby was approved by the board of directors; or the action of Mr. Percival S. Hill in revoking such power of attorney approved or confirmed?

A. Do you wish me to look at that now?

Q. Yes?

(At this point the witness left the room, and, on his return, the deposition was continued.)

"The Witness: I find that on December 6th we held a meeting, at which there was no quorum present, and no business transacted, necessarily. On December 13th a meeting which was adjourned to the 14th, and the meeting held on the 14th. We held a meeting on January 3rd and another on January 10th.

Q. Now, answer the other question Mr. Wilcox; at those meetings isn't it a fact that the action of Percival S. Hill in sending to the Secretary of State of Louisiana the revocation of the power of attorney made out by him in the name of the American Tobacco Company was never approved?

A. **IT WAS NOT MENTIONED AT ALL AT ANY OF THOSE MEETINGS. NO REFERENCE WHATEVER WAS MADE TO IT.**

(Pp. 78 and 79.)

Under the laws of Louisiana, as under general law, there was no authority in Mr. Hill, a vice president, to revoke the power of attorney issued under the authority of the board of directors. Even a president's power—here only a vice-president acted—is not thus conceded by the authorities. The Supreme Court of Louisiana, through Judge Monroe, now Chief Justice of the Supreme Court of Louisiana, says :

“The rule upon the subject of the representation of a corporation by other officers and agents than the directors is thus stated in a late work, to-wit :

“‘In general, the representation of a corporation by other officers and agents than the directors—their authority to convey or transfer property and bind the corporation by contracts, and the liability of the corporation on contracts not authorized in fact—is governed by the law governing the relation of principal and agent generally. The general rule is that the president, treasurer, secretary, general manager and other officers and agents of a corporation have such authority only as is expressly or impliedly conferred upon them by the charter or general law, by the articles of association, or by-laws, by vote of the stockholders or members, and by the board of directors, acting within the scope of their authority, but, like a natural person, a corporation is liable for the acts of its officers and agents which, although unauthorized, are within the apparent scope of their authority, and it may become liable for unauthorized acts by ratification.’

“Marshall on Corporations, p. 953.

“‘In view of the fact that presidents of corporations are often given general supervision and control over their management, it has been held by some Courts that contracts, or acts, made or done, by the president of a corporation, in the course of its ordi-

nary business, will be presumed to have been within his authority, unless the contrary appears. The prevailing doctrine in this country, however, is to the contrary. According to the decided weight of authority, whether he has authority to do a particular act depends upon the powers conferred upon him either by the charter or by the stockholders or directors. * * * *The mere fact that he is president, without more, does not imply that he has any greater power than any other director.* Although there are some decisions to the contrary, this view is sustained by the overwhelming weight of authority.' *Id.*, pp. 960, 961.

"*Virtute officii*, a president has very little authority to act for his corporation, and can bind it only by such contracts as come within its most ordinary routine business.' (*Taylor on Private Corporations*, 3d Ed., p. 197.)

"See also, *Bright v. Metairie Cemetery Ass'n.*, 33 La. An., 58; *N. O. Baton Rouge & Bayou Sara Packet Co. v. Brown*, 36 La. An., 142, 51 Am. Rep., 5; *Police Jury v. City Council of Monroe*, 38 La. An., 631; *Police Jury v. Wise*, 38 La. An., 704.

"No theory of ratification can be sustained in the case at bar, because, prior to the date at which the matter was first called to the attention of plaintiff's board of directors, defendant had withdrawn altogether, and there was nothing left to be ratified.

"Judgment affirmed."

Jackson Brewing Co. v. Canton, 118 La., 826, 827.

There would be no use in having a board of directors to do any thing if a vice president could undo it.

IV.

The appointment of Mr. Irby as agent for the service of process was made by the American Tobacco Company in compliance with the solemn requirements of the Louisiana law.

By that law it was made the duty of the American Tobacco Company to appoint such an agent and also a condition precedent to their carrying on business in this State.

Article 264 of the Constitution of Louisiana of 1898, then in force, provided :

“Art. 264. No domestic or foreign corporations shall do any business in this State without having one or more known places of business and an authorized agent or agents in the State, upon whom process may be served.”

Act 54 of 1904, then in force, provides :

“That it shall be the duty of every foreign corporation doing any business in this State to file in the office of the Secretary of State a written declaration setting forth and containing the place of location of its domicile, the place or places in the State where it is doing business and the names of its agents or other officer in this State upon whom process may be served.”

The foregoing legislation shows that its object is to subject foreign corporations to the jurisdiction of the Courts of Louisiana.

The question is **can this jurisdiction over the foreign corporation be defeated and frustrated as to business**

done under the license to enter the State by withdrawing the power of attorney?

The Supreme Court of Louisiana answers the question:

"A foreign insurance company, doing business through an agent in New Orleans, and taking risks in Louisiana, cannot be permitted to frustrate a claim in a Louisiana Court upon a contract made with it, by revoking the power of its agent on the eve of the institution of a suit for a loss, of which it has been notified. Such a proceeding savors of bad faith."

Michael v. Mutual Insurance Co., 10 La., An., 738.

Your Honors hold that such a decision is entitled to controlling weight.

A similar proposition is announced in the case of *Davis v. Kansas & Texas Coal Co., et al.*, 129 ~~A~~^FS., 149. The syllabus reads:

"Act Ark., Feb. 26, 1901 (Acts 1901, p. 52 Sec. 1), which provides that where a right of action shall accrue in favor of a resident or citizen of the State against a foreign corporation, whether arising on contract or in *tort*, and such corporation shall not have an agent in the State or have designated a person on whom service may be made, process may be served on the Auditor of State, and shall be sufficient to give jurisdiction of the person, when construed in connection with previous legislation requiring foreign corporations doing business in the State to designate agents therein on whom process might be served, is constitutional and valid, as applied to corporations which were doing business in the State after the passage of the act and at the time the cause of action sued on accrued therein in favor of a citizen, and a

corporation cannot evade service in such case by thereafter withdrawing from the State and cancelling the appointment of its designated agent."

In the case of *Mutual Reserve Association v. Phelps*, 190 U. S., 148, considering a statute of Kentucky providing for service on the Secretary of State, whose defendant contended such laws, this Court has said:

"Such a decision of the highest Court of Kentucky construing one of its own statutes, if not controlling upon this Court is very persuasive, and it certainly is controlling unless it be held to be merely an interpretation of a contract created by the statute. This and other kindred statutes enacted in various states indicated the purpose of the State that foreign corporations engaging in business within its limits shall submit the controversies growing out of that business to its Courts, and not compel a citizen having such a controversy to seek for the purpose of enforcing his claims the State in which the corporation has its home. Many of those statutes simply provided that the foreign corporation should name some person or persons upon whom service of process could be made. The insufficiency of such provision is evident, for the death or removal of the agent from the State leaves the corporation without any person upon whom process can be served. In order to remedy this defect some States, Kentucky among the number, have passed statutes, like the one before us, providing that the corporation shall consent that service may be made upon a permanent official of the State, so that death, removal or change of officer will not put the corporation beyond the reach of the process of the Courts. It would obviously thwart this purpose if this association, having made, as the testimony shows it had made, a multitude of

contracts with citizens of Kentucky, should be enabled by simply withdrawing the authority it had given to the insurance commissioner, to compel all these parties to seek the Courts of New York for the enforcement of their claims. It is true in this case the association did not voluntarily withdraw from the State, but was in effect by the State prevented from engaging in any new business. Why this was done is not shown. It must be presumed to have been for some good and sufficient reason, and it would be a harsh construction of the statute that, because the State had been constrained to compel the association to desist from engaging in any further business, it also deprived its citizens who had dealt with the association of the right to obtain relief in its Courts. We conclude, therefore, that the service of summons on the insurance commission was sufficient to bring the association into the State Court, and there being nothing else to impeach the judgment it must be considered as valid."

Mutual Reserve Association v. Phelps, 190
U. S., pp. 158, 159.

This Court has said:

"If it appears that there is a law of the State in respect to the service of process on foreign corporations and that the character of the agency is such as to render it fair, reasonable and just to imply an authority on the part of the agent to receive service, the law will and ought to draw such an inference and to imply such authority, and service under such circumstances and upon an agent of that character would be sufficient."

Mutual Ins. Co. v. Spratley, 172 U. S., 617.

(We have referred to this case in another part of our brief.)

A stronger case on the point of the continuing force of the agency for service of process as to business done by a company when that agency was acknowledged we wish to call your Honors attention to the case of *Hunter v. Mutual Reserve Life Ins. Co.*, 218 U. S., 587, where this Court cited approvingly the case of *Mutual Reserve Life Ins. Co. v. Birch*, and says:

"Certain judgments which were sued on in New York were obtained on actions upon policies issued when the insurance company was doing its regular business in the State of North Carolina and antedated its resolution to withdraw from the State. The case was vested in the Court of Appeals of New York on *Woodward v. Mutual Life Ins. Co.*, 178 N. Y., 485, 490. It was said in that case that the stipulation of the company in regard to service of process **BECAME AN OBLIGATION PRECISELY AS THOUGH IT 'HAD BEEN INCORPORATED IN THE POLICIES** and thereafter whether the company **continued to do business in the State or not** **policy holders** could commence action by service of process upon the Secretary of State, subsequently changed to insurance commission."

Hunter v. Mutual Reverse Life Ins. Co., 218 U. S., 587.

These two last cases were cases where the secretary was appointed the agent.

But is there any difference between the appointment of any other agent for the service of process?

The object and purpose of the appointment of Mr. Irby as agent for service of process in Louisiana was to subject the American Tobacco Company to the jurisdiction of the Courts sitting in Louisiana.

The attempted withdrawal of the agency was to defeat and frustrate the law requiring his appointment. The case of *Michael v. Mutual Ins. Co.*, 10 A., 737, has never been overruled and stands as the law of the State. It has been cited and distinguished in the 30 *La. An.*, where Judge Egan says:

"The case of *Michael v. Mutual Insurance Company of Nashville*, 10 *An.*, 737, relied upon by the Judge *a quo* and plaintiffs' counsel, has no application to the facts of the present case. There the exception admitted that the person upon whom citation was served had been agent of the absent company, but averred that he was so no longer. It did not appear that the company had any other agents in Louisiana than Johnson, who had issued the policy, and the Court held that a foreign insurance company doing business through an agent in New Orleans, and taking risks in Louisiana, cannot be permitted to frustrate a claim in a Louisiana Court upon a contract made with it by revoking the power of the agent on the eve of the institution of suit for a loss of which it has been notified, a doctrine which is perfectly correct, as was the decision under the facts of that case. Here, however, there is no question of the revocation of a power once existing, but a denial of power at any time in Behen, who alone was cited to represent or stand in judgment for the absent defendant company."

30 *La. An.*, 1188.

It is impossible that a corporation after formally, by resolution of its board of directors, having appointed an agent upon whom service of process can be made in order to transact its business in that State in compliance with its laws,

can defeat actions brought in that State by withdrawing that agent, after debts have been incurred.

It is still more impossible that a power of attorney appointing such an agent for the service of process, made and executed by the president and secretary of the defendant company by virtue of a resolution of its board of directors formally passed will be revoked by a letter of a vice president unauthorized or unratified by the board of directors. For this and the other reasons urged in the foregoing brief we believe the defendant company was properly cited and that the District Court of the United States for the Eastern District of Louisiana has jurisdiction to try this case.

Respectfully submitted,

EDWIN T. MERRICK,

RALPH J. SCHWARZ,

Of Counsel.

October 31, 1917.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 57 124

PEOPLE'S TOBACCO COMPANY, LIMITED,

Plaintiff in Error,

vs.

AMERICAN TOBACCO COMPANY,

Defendant in Error.

**In Error to the District Court of the United States
for the Eastern District of Louisiana.**

Brief of Defendant in Error.

JUNIUS PARKER,

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December 8th, 1917.

E. P. ANDREWS Ptg. Co., BALTIMORE PRINTING, 516 N. GLENN ST., N. O.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 897

PEOPLE'S TOBACCO COMPANY, LIMITED,
Plaintiff in Error,

versus

AMERICAN TOBACCO COMPANY,
Defendant in Error.

In Error to the District Court of the United States
for the Eastern District of Louisiana.
Brief of Defendant in Error.

STATEMENT OF CASE.

This is an action attempted to be brought by the plaintiff in error against the defendant in error for treble damages under the Sherman Anti-Trust Law. It was brought, so far as the filing of the complaint or petition is concerned, on

January 4, 1912 (Rec., p. 1). An attempted service was made on January 5, 1912, on one W. R. Irby, described in the return as "manager thereof" (Rec., pp. 21 and 22). Promptly thereafter, to-wit, on January 16, 1912, the American Tobacco Company excepted to the service and to the jurisdiction of the Court, on the grounds (1) that it was a corporation under the laws of the State of New Jersey and not, therefore, a citizen or inhabitant of the State of Louisiana, (2) that it was not and could not be "found" within the Eastern District of Louisiana or the State of Louisiana, not being engaged in business there, nor having any agent therein, (3) that the said W. R. Irby was not at the date of the institution of the suit, or at the date of service or at any subsequent time manager, or officer, or agent, or employee of the defendant, American Tobacco Company, nor authorized to receive service or process for it (Rec., pp. 22 and 23).

Very soon thereafter plaintiff in error attempted another service, this time on January 25, 1912, on the Assistant Secretary of State of Louisiana (Rec., p. 24), and on January 31, 1912, the defendant, American Tobacco Company, excepted to that service on substantially the same grounds (Rec., pp. 24 and 25). Plaintiff in error on February 2, 1914, attempted still another service, this time on the Secretary of State of Louisiana (Rec., pp. 25 and 26). Promptly thereafter, on February 17, 1914, the defendant, American Tobacco Company, excepted to this service on substantially the same grounds as the original exception (Rec., pp. 26 and 27).

Finally, in December, 1914, all of the exceptions were brought on for hearing. Considerable testimony was taken

(Rec., pp. 27 to 258), and the Court sustained the exceptions, holding that at none of the dates on which attempted service was had was the American Tobacco Company, the defendant, doing business in Louisiana, within the meaning of the law, in order that it might be considered as having been "found" in the district; that the said W. R. Irby was not at the time of the attempted service on him an employee or representative of the American Tobacco Company, in its employ, nor authorized to accept service of process; and that in view of the fact that the American Tobacco Company was not at the time of attempted service on it through the Assistant Secretary of State or through the Secretary of State, doing business in Louisiana, it was unnecessary to consider, as might be necessary otherwise, the validity of attempted service under Louisiana statute, through the Secretary of State (Rec., pp. 259-261). From a judgment following this opinion and dismissing the suit (Rec., p. 261) this writ of error has been taken.

STATEMENT OF FACTS.

That the American Tobacco Company is and has always been a New Jersey corporation is not denied. For many years up to November 30, 1911, it maintained a factory for the manufacture of tobacco and cigarettes in New Orleans, Louisiana, called the "W. R. Irby Branch of the American Tobacco Company," of which branch W. R. Irby was the manager. When it began business in New Orleans, to-wit,

in 1899, it complied with the statute of Louisiana with respect to foreign corporations doing business in the State, and filed in the office of the Secretary of State an appointment of W. R. Irby as its agent, upon whom process might be served (Rec., pp. 229-230).

On November 16, 1911, in a suit pending in the Circuit Court for the Southern District of New York, entitled "United States of America v. American Tobacco Company, et al.," a decree was entered which provided, among other things, for the disintegration of the American Tobacco Company (Rec., pp. 47-68). This decree directed the American Tobacco Company to make disposition of a great many of the stocks of other companies it had theretofore held, and a great many of its properties. The decree was detailed; directed the formation of new companies; provided for the payment of the purchase prices by them respectively, and the disposition of such purchase prices; it was detailed also as to the specific properties to be conveyed to each vendee company respectively. Among other things it provided that the American Tobacco Company should convey to the Liggett & Myers Tobacco Company, to be formed, the "W. R. Irby Branch of the American Tobacco Company of New Orleans, engaged in the manufacture of cigarettes and smoking tobacco, the principal brands being 'Home Run' and 'King Bee'" (Rec., p 57).

Provision was also made in this decree for the conduct of the business of these companies to be formed, so that there would be insured a competition between them; this was accomplished by a series of injunctions to which the American Tobacco Company and the other defendants, and the companies to be formed, were to be subject, and one of

these injunctions provided that "None of the said fourteen corporations (This included the American Tobacco Company and the Liggett & Myers Tobacco Company) shall have any officer or director who is also an officer or director in any other of said corporations," and "None of said fourteen corporations shall retain or employ the same agent or agents for the purchase in the United States of tobacco leaf or other raw material, or for the sale in the United States of tobacco or other products, as that of any other of said corporations" (Rec., p. 66).

The direction in this decree to the American Tobacco Company was to proceed forthwith, but provision was made that it and the other defendants might have for the complete carrying out of the decree until February 28, 1912 (Rec., p. 64).

The executive officers of the American Tobacco Company, including Mr. Percival S. Hill, one of its vice presidents, of course, had the duty of prompt compliance with this decree, and on November 29, 1911, the Liggett & Myers Tobacco Company had been organized. Mr. W. R. Irby had been a director of the American Tobacco Company, and managing director of its W. R. Irby Branch at New Orleans. He was to be a director of the Liggett & Myers Company, and on November 29, 1911, he telegraphed his resignation as a director, and that resignation was accepted on the 1st of December, 1911 (Rec., pp. 84-85).

The American Cigar Company was a party defendant to the suit of the United States against the American Tobacco Company, et al., and was a company in which the American Tobacco Company held some, but not all of the stock (Rec., p. 54). It had a factory building in New Orleans, occupied by a subsidiary of it, called Havana Ameri-

can Company, and by agreement between it and the new Liggett & Myers Tobacco Company, carrying out an incomplete arrangement which had been in negotiation between it and the American Tobacco Company, the American Tobacco Company deeded its factory real estate in New Orleans to the American Cigar Company on December 1, 1911 (Rec., pp. 85-87) and the American Cigar Company on the same date conveyed its factory building to the Liggett & Myers Tobacco Company (Rec., pp. 89-93). This was a mere real estate conveyance.

On the same date, to-wit, December 1, 1911, the American Tobacco Company conveyed to the Liggett & Myers Tobacco Company, by a general conveyance, with covenants for further assurance of title, all of the property directed by the decree of November 16, 1911, to be conveyed by it to the Liggett & Myers Tobacco Company, including "W. R. Irby Branch of the American Tobacco Company at New Orleans (the factory conveyed will be the factory now occupied by American Cigar Company), engaged in the manufacture of cigarettes and smoking tobacco, the principal brands being 'Home Run' and 'King Bee'" (Rec., pp. 94-96).

It will be noted that all of these conveyances by the American Tobacco Company were executed by Percival S. Hill, vice president.

On the same date, to-wit, December 1, 1911, the American Tobacco Company, having thus disposed of its only business in Louisiana, to a company which included among its employees and directors, Mr. W. R. Irby, executed an instrument declaring

"That the American Tobacco Company, a corporation organized and existing under the laws of the

State of New Jersey, with its principal office at 110 First Street, Jersey City, and office at 111 Fifth Avenue, New York City, having disposed of all its property in the State of Louisiana and ceased to do business in said State, has revoked authority of its resident agent in said State of Louisiana, and does hereby revoke the authority of said agent and cancel and annul his appointment as such agent." (Rec., pp. 83-84).

This instrument was filed in the office of the Secretary of State of Louisiana on December 15, 1911, and recorded in a book kept there called "Procurations" (Rec., p. 83).

This instrument was executed by the American Tobacco Company by Percival S. Hill, vice-president, under its corporate seal, and attested by its secretary, and duly acknowledged as the act and deed of said corporation.

At the same time similar revocations were made as to the authority of other agents who had ceased their relations to the American Tobacco Company and gone into the employ of the Liggett & Myers Tobacco Company or some other vendee company (Rec., p. 74). The directors of the company did not specifically authorize this revocation (Rec., p. 76), but the operations of the New Orleans branch and jurisdiction over Mr. Irby was in Mr. Hill, as vice president (Rec., p. 76), and of course the disintegration was under the general direction of the directors, and Mr. Hill deemed the revocation and appointment of such agencies and their revocation under his authority (Rec., p. 76).

After December 1, 1911, the American Tobacco Company certainly had no factory in the State of Louisiana. Mr. Irby certainly had no business connection with it, Mr.

Irby's direct examination is brief, and eliminating the dialogue from it is as follows:

"I was once connected with the American Tobacco Company. My connection ceased the 1st of December, 1911. I am now connected with the Liggett & Myers Tobacco Company, having become connected with it the 1st of December, 1911. The cause of my severing my connection with the American Tobacco Company was that under the decree of the Supreme Court the American Tobacco Company was dissolved or formed into separate groups, one of which was the Liggett & Myers, and I became a director of that particular group. The business of the American Tobacco Company in the City of New Orleans was sold to the Liggett & Myers Tobacco Company. I am the manager of Liggett & Myers Tobacco Company in New Orleans. I have had no connection whatsoever with the American Tobacco Company since the 1st of December, 1911, nor have I drawn any salary from the American Tobacco Company since that time" (Rec., p. 33).

Under the Internal Revenue Laws the owner of tobacco and cigarette factories is subject to Internal Revenue regulations. He must give bond, report stocks from time to time, and comply with various other regulations. The American Tobacco Company closed its factory on November 29, 1911, with an inventory reported to the Internal Revenue Department, and the Liggett & Myers Tobacco Company consummated by December 4th, 1911, its opening inventory and had its bond approved, and since that transaction the American Tobacco Company has not appeared on any of the revenue books in New Orleans as the manufacturer of tobacco or cigarettes (Rec., p. 151).

The American Tobacco Company, so far as its New Orleans business was concerned, billed its goods from the factory, and to that end had bill heads and other stationery. The sale of the New Orleans business to Liggett & Myers Tobacco Company was the sale of everything as it stood, "lock-stock-and-barrel," and the Liggett & Myers Tobacco Company took over the organization, stamping across the bill heads the words "Liggett & Myers Tobacco Company, Successors." Occasionally checks would come in payable to the American Tobacco Company by inadvertance of the drawer of the check, and these were, by stamped endorsement, passed on to the Liggett & Myers Tobacco Company, so that the Liggett & Myers Tobacco Company and not the American Tobacco Company received all payments (Rec., p., 138).

The American Tobacco Company, after the disintegration required of it, was left with a number of tobacco and cigarette factories, all situate outside of the State of Louisiana. Some of its products had a consumption in Louisiana and adjacent States and some did not. It, from time to time after December 1, 1911, sent circulars to New Orleans tobacco merchants offering terms on certain of its brands. These circulars almost invariably, and certainly to such an extent as to give the whole trade notice, contained the following words:

"All orders subject to acceptance by our New York office. No representative or employee of this company has authority to change any circular, letter or price list issued by this company" (Rec., pp. 242, 245, 246, 247, 249, 251.)

It has, from time to time, traveling through Louisiana and adjacent States commercial travelers or drummers

seeking to further the sales, and by a display of advertising matter, giving of samples, interviews with retail dealers, and such other methods, seeking to stimulate consumption of its brands, to the end that its shipments to dealers within the State shall be increased (Rec., p. 117).

The American Tobacco Company also, through correspondence conducted from its New York office, inserted in a New Orleans newspaper an advertisement of its brands (Rec., pp. 202, 152).

The foregoing facts are undisputed, and indeed there is hardly any dispute as to facts at all, but plaintiff in error would call attention to certain pre-existing or presently existing inter-corporate relations and other incidents as affecting the question. It was admitted that the Havana American Company, a New Jersey corporation, engaged in the business of manufacturing cigars, has a factory in New Orleans, and that the majority of its stock is owned by the American Cigar Company, and the majority of the stock of the American Cigar Company is owned by the American Tobacco Company, and that that was true before and after November 16, 1911 (Rec., pp. 97-98), but the evidence is that the Havana American Company does not and never did business for or on behalf of the American Tobacco Company (Rec., pp. 98, 99).

Before November 16, 1911, the American Tobacco Company owned the majority of stock of an English corporation known as British-American Tobacco Company, Limited (Rec., p. 101). The British-American Tobacco Company, Limited, owned a majority of the stock of W. S. Matthews & Sons, and W. S. Matthews & Sons conducted business in New Orleans under the name of Black Horse Warehouse Tobacco Company the W. R. Irby Branch of the

American Tobacco Company to this Black Horse Warehouse Tobacco Company the W. R. Irby Branch of the American Tobacco Company had acted to some extent for the Black Horse Warehouse Tobacco Company in a formal way as forwarding agent. For a little while after the disintegration, and perhaps because there was involved only foreign sale and formal rather than executive service, the W. R. Irby Branch of Liggett & Myers Tobacco Company acted as forwarding agent for the Black Horse Warehouse Tobacco Company, and W. R. Irby had some activity under an independent power of attorney granted by the Black Horse Warehouse Tobacco Company, for export purposes, both while he represented the American Tobacco Company and for a while after he represented the Liggett & Myers Tobacco Company.

Besides these matters, which are constantly referred to in the record, but which seem to us to involve nothing material, it appears that there were several powers of attorney given by the American Tobacco Company for export purposes, or internal revenue purposes, that have not been formally revoked in the customhouse or internal revenue office. One of these was issued to Mr. Saulsbury, who testified that he formerly had authority from the American Tobacco Company to represent it in certain export formalities, and that so far as he knew there had been no express revocation of this formal authority; but he testified further: (Rec., p. 135)

Q. Have you done any service whatever for the American Tobacco Company since December 1, 1911?

A. None whatever.

Q. So far as you have known, or believe, have

you had authority from the American Tobacco Company to do anything for it since December 1, 1911?

A. No, sir.

Q. Have you made any exportation, or attended to any for the American Tobacco Company, since December 1, 1911?

A. None whatever.

Q. Have you had any connection with the American Tobacco Company since December 1, 1911?

A. None whatever.

Q. Has your authority to represent the American Tobacco Company under the powers of attorney you spoke of, been revoked since December 1, 1911?

A. I do not know (Rec., p. 135).

There was still another matter that involved some sort of relation to business in Louisiana by the defendant after December 1, 1911, but ending before January 1, 1912 (the attempted service was on January 5, 1912): While the American Tobacco Company was engaged in business in New Orleans with the factory there known as the W. R. Irby Branch, the products of this W. R. Irby Branch were sold and billed by the branch itself (Rec., p. 107). It appears that so far as the general products of the American Tobacco Company were concerned, including those made everywhere except by the W. R. Irby Branch, the factory had nothing to do with the shipping, selling or billing, but the selling and billing were done from the New York office and shipments made from the factory outside of Louisiana where the particular goods were made. Therefore merchants in New Orleans and Louisiana were dealing with the W. R. Irby Branch of the American Tobacco Company as if it were one concern, and when they desired brands

manufactured elsewhere dealt with the American Tobacco Company in New York as if it were another institution. This is shown by the testimony of Mr. Dumestre, formerly one of the principal employees of the W. R. Irby Branch of the American Tobacco Company, but at the time of the trial an employee of the W. R. Irby Branch of the Liggett & Myers Tobacco Company:

Q. During the time that the W. R. Irby Branch of the American Tobacco Company was a branch of the American Tobacco Company, do you know whether the American Tobacco Company sold from New York their products from Louisiana, Texas, etc.?

A. Yes, sir.

Q. They had traveling men soliciting orders down here, did they not?

A. Yes, sir.

Q. Generally speaking, where were those goods delivered from—I don't mean where they were delivered from, but were they delivered from the W. R. Irby Branch?

A. No, sir.

Q. In other words, I understand up to December 1, 1911, the American Tobacco Company's products, some were sold here and manufactured here by and through the W. R. Irby Branch?

A. Yes, sir.

Q. And some goods were sold in a way that you don't know anything about?

A. Correct (Rec., p. 109).

It appears though that there were two exceptions to this, which perhaps arose from the large demand in and about New Orleans for the two products which formed the exceptions. The American Tobacco Company imported Riz

La Croix cigarette paper and manufactured Red Cross Tobacco. Red Cross tobacco was manufactured at the Lorillard Branch in Jersey City. Both of these products were stored in some quantities at the W. R. Irby Branch, and while the W. R. Irby Branch had nothing to do with selling the product, the American Tobacco Company, from its New York office, would give directions to the W. R. Irby Branch to make deliveries and deliveries would be made in accordance with these directions.

At the time of the disintegration enforced by the decree of November 16, 1911, the Lorillard factory was conveyed not to the Liggett & Myers Tobacco Company, but to another new vendee corporation formed, called the P. Lorillard Company, and the Riz La Croix cigarette paper book business was left in the hands of the American Tobacco Company.

On December 1, 1911, there was some of this Riz La Croix cigarette paper and of this Red Cross tobacco at the W. R. Irby Branch, and the employees of the W. R. Irby Branch of the Liggett & Myers Tobacco Company continued to make these deliveries until the stock was exhausted.

Of course these goods were the property respectively of the American Tobacco Company and the Lorillard Company, forming no part of the business or inventory of the W. R. Irby Branch:

Q. Thereafter did you bill that paper out, or that Red Cross tobacco?

A. No, sir.

Q. What was it you did and when did you cease?

A. We made deliveries of the Riz La Croix paper on orders we received from the American Tobacco

Company, and delivered the Red Cross tobacco on orders we received from the Lorillard Company.

Q. Did you receive those orders in the sense of getting a letter from the American Tobacco Company to please deliver to Mr. John Smith certain Riz La Croix paper?

A. They had a regular form, deliver to So and So at such and such a price; in fact, we made some shipments outside the city.

Q. In other words either to a person or make a shipment?

A. Yes, sir.

Q. Did you collect any of those bills?

A. No, sir, we did not render any bills for them and did not collect for them either.

Q. Did that continue, or was it simply to the exhaustion of what they had on hand?

A. It was just until the stock was exhausted, that was all.

Q. Do you know when that was?

A. I do not recollect right now, no, sir.

Q. Do I understand that it was a month or two after December first?

A. Yes, sir, it was all over in a month; we didn't have any more stock then.

Q. And none was ever sent you after that?

A. No, sir, not a bit, not after that (Rec., p. 110).

A discussion of whether or not this constituted a "doing of business" becomes unimportant. It becomes unimportant because it is perfectly apparent from the foregoing that these deliveries had ceased before the institution of this suit or any attempted service.

ARGUMENT ON THE LAW.

I.

Under the Sherman Law, Section 7, a suit can be brought only in a district in which the defendant "resides or is found," and a defendant corporation "resides" only in the district of its incorporation, and is "found" only in those districts in which it "does business."

This suit was brought in January, 1912, before the enactment of the Clayton Bill (Act of October 15, 1914). The Clayton Bill provides (Section 4) that suits may be brought for treble damages under it, or any other of the anti-trust laws, in any district where the defendant "resides or is found or **has an agent.**" This, in effect, constitutes an amendment of the Sherman Law, which provides for suits only in those districts in which defendant "resides or is found" (Section 7). It was a congressional recognition of what the Courts, as hereinafter cited, had already held, to-wit, that a corporation might have an agent in a State where it could not be said to be "found."

The fundamental question then in this case which, being decided against the plaintiff in error, makes the consideration of other questions unnecessary, is whether the status and activities of the American Tobacco Company, as constituted and carried on and after January 5, 1912, was such that the corporation could be said to be "found" within the State. If they were then it will be necessary to consider the matter of service and the relation of the person on whom service was attempted; but if they were not then all questions as to the person upon whom service was at-

tempted and whether the authority for such had been sufficiently formally revoked or not, become immaterial.

"The jurisdiction of the Circuit Court of the United States depends upon Acts passed by Congress pursuant to the power conferred upon it by the Constitution of the United States, and it cannot be enlarged or abridged by any statute of a State."

Goldey v. Morning News, 156 U. S., 518.

It is true that general jurisdiction of Federal Courts is now limited to the district in which the defendant resides, but previous to 1897 the general Judiciary Act contemplated the bringing of suits where the defendant resides or was found, and in that way there are accessible a number of cases illustrating what constitutes the status and activities of a given corporation in a given district necessary to justify the conclusion that it is "found" within the district.

No one has doubted the validity of these cases as authority in defining the word "found" in the seventh section of the Sherman Law.

In *Aluminum Foundry Company v. Aluminum Castings Company*, 190 Federal, 879, 883, the Court, discussing a suit brought for treble damages under the Sherman Law, said with respect to a contention by defendant corporation, that it was not doing business in a given district in such sense that it was subject to suit:

"The question raised must be determined by the principle of Federal decisions even if such service as was had would be upheld as sufficient in the State Courts.

"Barrow Steamship Company against Kane, 170 U. S., 111.

"By these decisions it is settled that before a foreign corporation is subject to suit in a State in general two things must occur: (1) the corporation must be doing business in the State, and (2) process must be served there on the agent who represents it in business there.

"Peterson v. Railroad Company, 205 U. S., 390.

"First, does the fact that the act in question used the phrase 'resides or is found' obviate the necessity of showing that the corporation is 'doing business in the State?' It would appear not. In the absence of authoritative decisions on this Act of 1890, exactly in point, ruling on a similar act may be examined with profit. Under the Act of 1875 which used the phrase 'is found' it was held that a foreign corporation 'was found' for the purpose of service 'where it was doing business.'

"Manufacturing Company against Railway, 13 Federal, 358; Mohr against Insurance Company, 12 Federal, 474; Block against Athison Company, 21 Federal, 529; Spencer against Kansas, 56 Federal, 741; ex parte Schollenberger, 96 U. S., 369; Insurance Company against Woolworth, 111 U. S., 146.

"There seems no reason to give a broader meaning to the words of the Act of 1890 than to those of the Act of 1875."

In *Dobson v. Farbenfabriken Company, 206 Federal, 125*, a suit for treble damages under the seventh section of the Sherman Law, it was assumed without argument that the defendant must be "found" in the district in the sense in which it must have been found under the Act of 1875, in order to justify the jurisdiction of the Court:

"It is essential in order to support the jurisdiction of the Court that it shall appear somewhere on

the record, either in the application for the writ or accompany its service, or in the pleadings or the findings of the Court, that the corporation is engaged in business in the district."

Besides these authorities it is, of course, legally logical that when identical words are used in a later statute, as were used in an earlier statute, the decision of the Court on the words in the earlier statute are definitely authoritative in arriving at the meaning of the same words in a later statute. What constitutes then "being found" within a district in which the corporation confesses it does not reside? To be found, upon all the authorities, must involve the corporation's **doing business** within the district.

In *United States v. Bell Telephone Company*, 29 Federal, 17 (Judge Jackson), there is a clear discussion of the meaning of the word "found," as used in the Judiciary Act of March 3, 1875:

"The Judiciary Act (Revised Statute, Section 739) an Act of March 3, 1875, providing that no civil suit or action should be brought against any person outside of the district in which he resides or may be found at the time of the service of process, do not affect the general jurisdiction of this Court, but merely confer a personal privilege or exemption upon the defendant, which can be waived and is waived by a foreign corporation, not only by voluntary appearance in the suit, but by doing business in a State imposing the condition or liability to suit there by service or process on its agent. It cannot be held sufficient to give this Court jurisdiction *in personam* over a foreign corporation that it has property rights, however extensive, within the district, or that it has pecuniary interests, however val-

uable, in business managed and conducted by others. It must itself be carrying on business in its own right, on its own responsibility, and for its own account and through or by means of its own agents, officers or representatives, in order to bring it within the operation of the laws of a State other than that where it is incorporated, making it amenable, to suit there, as a condition of its doing business in such State."

Most of the cases that have been decided by the Supreme Court of the United States that affect this question have been cases where attempts were made to sue a defendant corporation in States other than the State of its residence, in State Courts. It is obvious that these cases so far as they were in favor of the defendant corporations, constitute the strongest possible authority for the defendant in error, for they involve the constitutional right of a defendant to be exempt from personal suit and judgment in a jurisdiction where he has no existence or activities. It is altogether conceivable that a corporation might have a status and activities within a given State that would make it impossible for it to avail itself of its constitutional privilege just mentioned, and yet the status and activities be such as not to cause it to be "found" within the district in the sense of the Sherman Law of 1890, or the Judiciary Acts of 1879 and 1875. It is inconceivable though that a corporation could be "found" within the terms of the Federal statutes and not be sueable under the Constitution, in the State Courts. Therefore it is that every decision of the Supreme Court of the United States or the lower Federal Courts that denies the sueability of a corporation in a given State in the State Courts is *a fortiori* an authority for defendant,

whereas the cases which have been decided against corporations on the constitutional question may not be against us in the present case because of statutory construction.

It may be necessary later to attempt to discriminate between decisions, but the general rule is so well established as to make multiplication of authority unnecessary and inexcusable. A dozen previous decisions of this Court are cited in the comparatively late case of *Railway Company v. Alexander*, 227 U. S., 219, for the following proposition:

"A long line of decisions in this Court has established that in order to render a corporation amenable to service of process in a foreign jurisdiction it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof" (p. 226.)

Later in the same opinion, the Court says:

"We reach the conclusion that this case is to be decided upon the principles which have heretofore prevailed in determining whether a foreign corporation is doing business within the district, in such sense as to subject it to suit therein. This Court has decided each case of this character upon the facts brought before it, and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. **In a general way it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it was served, and in which it is bound to appear when a proper agent has been served with process**" (P. 227).

What constitutes this doing of business, as has been said, is not to be made the subject of precise definition by the Court, but yet decisions on the question have settled some things. An interesting decision as indicating what does constitute the doing of business is *Green v. Railway*, 205 U. S., 530. This case is worthy, too, of special consideration because this Court, in that case, was not considering a State proceeding but a Federal statute:

"The jurisdiction of the Circuit Court in this State was founded solely upon the fact that the parties were citizens of different States. In such case a suit may be brought in the district of the residence of either. But to obtain jurisdiction there must be service, and the service was upon the corporation in the Eastern District of Pennsylvania. Its validity depends upon whether the corporation was doing business in that district, **in such a manner and to such an extent as to warrant the inference that through its agents it was present there**" (p. 532).

It appeared that the defendant's line of railroad did not come east of Chicago, but as incidental and collateral to its business of the carriage of freight and passengers it was proper, and according to the business methods generally pursued, probably essential, that freight and passenger traffic should be solicited in other parts of the country than those through which its tracks ran; for the purpose of conducting this incidental business the defendant had employed an agent in Philadelphia designated as district freight and passenger agent, who solicited and procured passengers and freight to be transported over its line, and in many ways advertised to the public these facts; he had

several clerks and various traveling solicitors under him; he sold no tickets, but when a prospective passenger desired a ticket he took the money and transmitted it to Chicago and secured a ticket and delivered it to the prospective passenger; he occasionally, for the convenience of shippers who had received bills of lading from an initial line for goods routed over the defendant's line, gave in exchange therefor bills of lading over the defendant's line. He had no right to vary prices for either passenger or freight traffic.

The Court, upon this state of facts, said:

"It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carrying of freight or passengers. In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver Railroad Company v. Roller*, 100 *Federal*, 738, and *Tuchband v. Railroad*, 115 *New York*, 437. The facts in those cases were similar to those in the present case. **But in both cases action was brought in State Courts and the question was of the interpretation of a State statute and the jurisdiction of the State Courts.**

"The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'doing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it" (p. 534).

St. Louis & C. Ry. v. Alexander, 227 *U. S.*, 218; *Green v. C. B. & Q. R. R.*, 205 *U. S.*, 530; *Peterson v. Chicago & R.*

Co., 205 U. S., 364, were approved and followed in *Philadelphia & R. R. Co. v. McKibben*, 243 U. S., 264, in which this Court said (p. 265) :

"A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the State in such manner and to such an extent as to warrant the inference that it is present there. And even if it is doing business within the State the process will be valid only if served upon some authorized agent."

II.

The American Tobacco Company was not in January, 1912, doing business within the State of Louisiana so as to be "found" there in any way, (a) whether by the activities of its drummers or traveling salesmen, (b) its relation to corporations that were engaged in business in the State, (c) by virtue of its failure to formally withdraw certain legal authority from some of its previously appointed attorneys-in-fact for Internal Revenue and Customs matters, or (d) the fact that it was recently before the institution of this suit in business in Louisiana and had sold out and permitted the occasional use of its name on checks, etc., by the vendee company.

A. Since *Robbins v. Shelby Taxing District*, 120 U. S., 489, it has been established that the solicitation of orders, to be, if such solicitation is successful, followed by increased shipment of goods without the State to within the State, does not constitute a doing of business in any proper sense in the State in which the solicitation or other inducements occur.

In *Boardman v. McClure Company*, 123 Federal, 614, it appeared that the McClure Company, engaged in publishing books in New York, had traveling solicitors, including one who was almost continually in the State of Minnesota working up advertising business for the magazine and soliciting and taking orders for advertising; he made no definite contracts, but took orders and submitted them to the home office of the McClure Company at New York; complaints from Minnesota were submitted to, and through him to the home office for adjustment; service was made on Little while he was within the State of Minnesota visiting customers of the magazine. It was held that the McClure Company was not doing business in Minnesota.

This Court, in *Green v. Railway Company*, 205 U. S., 530, just cited, assumed without argument that active solicitation by a resident agent did not constitute a doing of business.

In *Maxwell v. Railway Company*, 34 Federal, 286, service was made on a passenger agent who had, at defendant's expense, desk room in a coal office, and who had authority to solicit travel; he was employed to attempt to compromise plaintiff's claim, in addition to his ordinary duties, but it was held that defendant was not found within the district, because not doing business.

In *Fairbanks v. Railway*, 54 Federal, 429, (C. C. A.), it appeared that the railway company had in Chicago a resident agent soliciting freight business, with desk room paid for by the railroad company, and it was held that this did not constitute a doing of business.

In *McGuire v. Railway Company*, 155 *Federal Reporter*, 230, the Court said:

"A railroad company of another State neither owning or operating any line of road in the State of Iowa cannot be brought within the jurisdiction of a State Court therein, either under the rule of the National Courts or the Iowa statutes relating to foreign corporations, by a service made upon an employee, not a general agent, maintainng an office in that State for the purpose of soliciting business to be done outside of the State, where the cause of action has no connection with such office or agency."

In *Wall v. Railroad Company*, 95 *Federal*, 398, it appeared that the railroad company defendant in Chicago had no line of railroad in Illinois, but had there an agent with power to solicit business, but without authority to make any contracts or rates for transportation. It was held that it was not doing business within the State.

In *Case v. Smith Company*, 156 *Federal*, it appeared that the defendant was a local operating corporation and maintaining in New York City an office room where a sales agent attempted to sell coal. The Court denied jurisdiction in the Federal Court, calling attention to the decision in *Goldey v. Morning News*, 156 *U. S.*, 523, already quoted.

Against these decisions the case of *International Harvester Company v. Kentucky*, 234 *U. S.*, 579, does not militate. In the first place it is to be noted that that was a case in which there was no Federal statute being construed, but where the construction of a State statute and the constitutional right of the defendant to disregard service of process in the State Courts were involved. It is to be noted,

moreover, that while the business of the International Harvester Company was interstate in that it had no factory in Kentucky, its "agents not only solicited orders in Kentucky, but might there receive payment in money, checks or drafts, and they might take notes of customers, which notes were made payable, and doubtless were collected at any bank in Kentucky," and it was "this course of conduct of authorized agents within the State which, in the judgment of this Court, constituted a doing of business there in such wise that the Harvester Company might be fairly said to have been there doing business and amenable to the process of the Courts of the State." While the Court found the Harvester Company doing business in Kentucky on the above facts it said, page 585, "upon this question the case is a close one."

There was no such authority as this in the drummers of the American Tobacco Company who traveled through Louisiana. They expressly had no authority to even accept an order, except subject to the acceptance of the New York office. They expressly had no authority to vary a price list or tariff; they expressly had no authority to collect any debt due to the American Tobacco Company, or compound any claim—customers of the American Tobacco Company made remittances to New York.

The facts in *International Text Book Co. v. Pigg*, 217 U. S., 91, differ entirely from this case. The case came up from a State Court. The Text Book Company had a resident agent in Kansas, the case involved the interpretation of a statute of Kansas under which it was held to be continuously conducting a part of its regular business in Kansas, the statute providing that it "was the intention of the Legislature, that the State should reach every continuous

exercise of a foreign franchise." The State Court had held and this Court agreed that:

"Upon any reasonable interpretation of the statute that company, both at the date of the contract sued on, and when this action was brought, must be held as doing business in Kansas."

B. That the American Tobacco Company in January, 1912, directly owned stock in the American Cigar Company, which owned real estate in New Orleans, and indirectly owned stock in the Havana American Company that was operated there, does not constitute a doing of business so as to make the American Tobacco Company "found" there. Certainly its previous indirect ownership of stock in the Black Horse Warehouse Tobacco Company, disposed of when this suit was brought, constitutes no such doing of business. Argument on this is unnecessary because of the late decisions of the Court.

In *Peterson v. Chicago, Rock Island & Pacific Railway Company*, 205 U. S., 364, an attempt was made to sue in the Circuit Court of the United States for the Northern District of Texas, the railway defendant. It appeared that a railway company of which the defendant company owned substantially all of the stock, was doing business within the district. The facts were infinitely stronger against the defendant than in the case at bar, because the two companies had a great many common agents and employees, paid in the proportion to the business done by them for each of the said companies. The Court held though, first, that:

"It is settled by the decisions of this Court that foreign corporations can be served with process within the State only when doing business therein,

and such service must be upon an agent who represents the corporation's business."

And, second, that a railroad company is not doing business in a State simply because another railroad company of which it owns practically the entire capital stock, does do business therein; and then further, that the last named company and its officers and employees are not agents of the holding company for the purpose of process, even through such agents may at times also represent the holding company as to business done in other States.

Both of the above points were readjudicated in *Philadelphia R. R. v. McKibbin*, 243 U. S., 264, 268, which approved the above case.

C. Authorities have been not found and seem to us not needed for the proposition that the failure to cancel a formal power of attorney in the place where it has been lodged, cannot constitute of itself a carrying on of business. Tobacco manufacturers and exporters have to give bonds, make representations and execute obligations in the course of their business. It is most convenient for them to do this by an attorney duly appointed, and a power of attorney is filed in the office of the customs or revenue officials. If this were a case in which the defendant company was seeking to avoid liability on account of some conduct of the party holding the power, quite another question would arise. As a matter of fact the holders of these powers had left the service of the defendant, and while the defendant might have been liable if they had in default of their duties taken some action, the fact is that they have taken none. As long as words have their ordinary significance the mere existence of a pre-given legal authority to do an act, when

no act is done under it, cannot constitute a "doing of business" by the party who gave the power.

D. In *DeCastro v. Campagnie, etc.*, 76 *Federal*, 425, in arriving at a decision as to whether a corporation was found within the district, Judge Lacombe used these very sensible words:

"The test to be applied is whether or not defendant is doing business within the district. When it begins to do business here it comes here; when it continues to do business here it remains; and when it finally ceases to do business here it departs. It is not easy to see how the mere refusal of the State officers to revoke a designation for the purpose of service, made while the corporation was in business here, will operate to prolong indefinitely the original designation long after the corporation may have departed."

The question involved in this aspect of this case is not a question of past history, motives, purposes, nor anything except an ascertainment of a present condition, to-wit: Is the defendant, as of January 5, 1912, engaged in business in the Eastern District of Louisiana? If not, under the decisions it is not to be found there, and if it is then under the decisions it is to be found there.

The statute makes no provision as to where the cause of action arose. One who thinks he has been injured by the violation of the Sherman Law by the defendant may bring his suit in any one of a dozen districts in which this defendant is doing business, and therefore can be found.

It may be suggested that this defendant hurriedly got out of Louisiana in order to avoid this suit. It is to be said in the first place that there are no facts to justify such a

suggestion, the New Orleans factory was sold to Liggett & Myers Tobacco Company at the same time the other factories were sold to the new company, and at the same time still others were sold to P. Lorillard Company. Mr. Irby's resignation as director was accepted promptly. The revocation of his authority was executed on December 1, at the same time as the authorities of other agents who were leaving the American Tobacco Company to go with other vendee companies, were revoked, but it was not filed until December 15, and certainly if the officers of the company had assumed that such revocation was necessary in order to prevent the valid bringing of this suit and had this suit in mind at all, they would not have let two weeks elapse after the execution of the revocation before filing it (Rec., pp. 83, 74).

Besides that, though, motive has nothing to do with the situation. This Court, in the case of *International Harvester Company against Kentucky*, *supra*, said:

"We place no stress upon the fact that the Harvester Company had previously been engaged in doing business in Kentucky and had withdrawn from that State for reasons of its own. Its motives cannot affect the legal questions herein involved. In order to hold it responsible under process of a State Court it must appear that it was carrying on business within the State at the time of the attempted service" (p. 585).

Dealing as we are with substantial things and questions, it cannot be that the action of the old W. R. Irby Branch management, after it had been transferred bodily to Liggett & Myers Tobacco Company, in sending out stationery

on which the American Tobacco Company's name had appeared and in rare instances failing to put the stamp on, and in using a rubber stamp to put into the possession of Liggett & Myers Tobacco Company its own check but mistakenly made payable to the American Tobacco Company, constituted a doing of business by the defendant, the American Tobacco Company. It may have been careless, but it was the carelessness of the Liggett & Myers Tobacco Company.

No one can read this record without realizing that the American Tobacco Company dropped out of New Orleans, and the State of Louisiana, when the Liggett & Myers Tobacco Company went in. The storage of the Riz La Croix cigarette paper books in New Orleans and the delivery from storage to a New Orleans customer so far as the question of doing business is concerned, needs no discussion, as hereinbefore stated, the only evidence adduced that this occurred at all establishes also that it was ended, and no stock was left, before this suit was brought. Therefore we are relieved of the responsibility of discussing what the effect technically would have been if at the time this suit was brought, the defendant, the American Tobacco Company, had on storage in New Orleans Riz La Croix cigarette paper books, shipped from abroad and kept for convenience of delivery.

There are numerous cases, certainly in the lower Courts, holding that this would not have constituted a doing of business, but to cite them or to discuss the matter at length might seem to involve a doubt on the fact, and there is not a particle of testimony to cast such doubt.

III.

The revocation of the authority of W. R. Irby as the agent upon whom process or service might be had was complete and valid, and even if the corporation had been engaged in business in the State of Louisiana when this suit was started, it could not have been brought into Court by any service of process on W. R. Irby.

In order to bring a corporation into Court there are two things, both of which must co-exist. First, the corporation must be "engaged in business" in the State, and second, the service must be had on a proper agent—either one designated in accordance with the State statute, or one engaged in the conduct of the business. These two matters are entirely distinct, and the existence of the agent, if indeed the corporation is doing no business, no more eliminates the first mentioned essential, to-wit, the doing of business in the State by the corporation, than does the fact that the corporation is doing business in the State eliminates the second essential, to-wit, the service of process on a proper agent.

No one doubts or denies that the fact is precisely as Mr. Irby, in an unqualified way, testified, that after December 1, 1911, he had not the slightest relation that he knew of to the American Tobacco Company, the defendant—he drew no salary, performed no duties and knew nothing of it, but was in fact the local manager and a director of the Liggett & Myers Tobacco Company (Rec., p. 33) which is a competitor of the American Tobacco Company (Rec., p. 46) and obliged to be a competitor under the decree in the dissolution suit (Rec., pp. 67 and 65).

The statutes of Louisiana makes provision for the designation of an agent upon whom service or process may be had, and notification to the Secretary of State of the name of such agent and his address. The defendant, in 1899, when it began business in Louisiana complied with the law, and at the time furnished a certified copy of a resolution authorizing the executive officers to make the appointment. But the statute makes no requirement of that sort (see statutes in Appendix). All that is required is the filing of a declaration of name of agent upon whom process may be served.

In December, 1911, Percival S. Hill was vice president of the American Tobacco Company, and as appears from this record the most active executive officer in carrying out the decree of disintegration of November 16, 1911. The board of directors did not formally authorize each step in this process—it did not have to authorize any of the steps, because these steps were taken in accordance with an order of Court. Mr. Hill executed under the seal of the corporation, attested by the assistant secretary, the revocation of Mr. Irby's authority. By what right does one say that this was an invalid act? An agent, to accept service, may be required to be appointed by a State statute, but he has no more dignity than an agent appointed for any other purpose. Suppose a selling agent or a manufacturing agent, or other ordinary agent, had been appointed, and at the time of his appointment the directors of the company had passed a resolution authorizing or approving the appointment, but thereafter the president or a vice president discharged the agent, could it be said in a suit by the agent for the unjustified discharge by the company, the company could defend on the ground that simply because

the appointment of the agent was authorized by the board, his discharge could not be effected by the executive officer having charge of such matters because, forsooth, he had no express authority from the board of directors?

The company had never repudiated Mr. Hill's act. Mr. Hill had particularly in charge the New Orleans investment. (Rec., p. 76.) Mr. Irby, the agent, never repudiated nor contested the validity of his discharge. Being about to become a director and the local manager of the Liggett & Meyers Tobacco Company, he had resigned as director of the defendant (Rec., p. 84) and from that time considered all relations with defendant severed, and declined to accept the papers when service of process was attempted upon him (Rec., p. 46).

The Secretary of State made no complaint of the revocation of the authority but accepted and filed it. The revocation was entirely formal, and not a telegraphic revocation, as plaintiff in error, confusing the revocation of this authority with Mr. Irby's resignation as director, seems to believe.

If this revocation then is valid, the judgment of the Court dismissing the petition was right, so far as any service upon Mr. Irby was concerned, even though it should be found that the American Tobacco Company was in some way or somehow, by some technical consideration, engaged in business in the State of Louisiana, because the revocation having ended Mr. Irby's legal designation, and his retirement from the defendant company having ended all relationship in fact as agent, service on the defendant, though it had been openly and notoriously engaged in business in Louisiana, through an attempted service on Mr. Irby, would have been ineffectual and invalid.

How can there be any doubt of the validity of the revocation? Mr. Hill, the vice president, who executed the revocation, was in charge of the factory and business in Louisiana. The moment the company decided upon the purchase of a factory and conduct of business in Louisiana, the factory and the business passed under his jurisdiction, and he did not require special authority from the directors for every step he took in the conduct of the business. He could originally without any resolution of the directors have appointed Irby agent to receive service of process, and the company could not have successfully repudiated the appointment for lack of authority as it was but one of the necessary steps towards the conduct of business in Louisiana just like engaging employees buying necessary stocks of tobacco, furniture, etc., and when the company left the State he had the same authority and power to revoke the appointment of Irby.

Irby's resignation carrying with it a complete severance of all of his relations with the defendant was formally accepted by the board of directors of the defendant company on **December 1, 1911** (Rec., p. 85), leaving defendant without a representative and manager in Louisiana, and on the same day it deeded its factory and going business in Louisiana to the Liggett & Meyers Tobacco Company, of which Irby then became a director and manager. These deeds of conveyance were executed on behalf of the company by the same Mr. Hill, who on the same day, **December 1, 1911**, executed the revocation of Irby's power of attorney (Rec., pp. 83, 84, 85). The decree in the Government suit required the defendant to deed its factory and business in Louisiana as a going business to the Liggett & Myers Com-

pany and get out, and the revocation of the power of attorney to Irby was but one of the steps in getting out, and most effective evidence that it was, in good faith, retiring from business.

Is it not idle, under these circumstances, to say that Hill's act was not the act of the corporation, because no formal resolution was passed specially authorizing the execution of the revocation by Mr. Hill?

Mr. Irby is an honorable man and promptly delivered the papers left with him to the attorneys who had represented the defendant in the previous damage suit brought by the plaintiff, but he was under no obligation to do so, and had no sort of relation to the defendant company at the time of the service, but was manager of a competitor and rival, and, therefore, had no interest in its welfare.

Had Irby suppressed the process, and judgment been taken by default, could it have been held, under the circumstances, that there had been due process of law?

As plaintiff seeks to derive some benefit from the statutes of Louisiana governing foreign corporations, notwithstanding defendant's withdrawal from the State, and ceasing to do business therein we will refer to and discuss them.

IV.

The statutes of Louisiana provide for service of process on foreign corporations only while they are doing business in the State. If a foreign corporation ceases doing business and withdraws from the State it cannot be brought into a Louisiana Court, and even if defendant had been doing business in Louisiana at the time of service of process, all three services were bad and in-

effective to subject defendant to the jurisdiction of the District Court.

In an appendix to this brief we print the articles of the Constitution and statutes of Louisiana providing for service of process on foreign corporations.

The statute governing this case is Act 54 of 1904, as amended by Act 284 of 1908. The Act of 1904 consists of three sections, and the Act of 1908 amended the first section only, leaving the other two sections in force.

In *Gouner v. Missouri Valley Bridge & Iron Co.*, 123 La., 964, the defendant, a foreign corporation, built a bridge in the Parish of St. Mary, La., and after completing the bridge withdrew from the State with all of its belongings. Defendant had not complied with the Act of 1904 requiring foreign corporations doing business in the State to appoint an agent to receive service of process, and plaintiff, whose son had lost his life while in the employ of defendant in the construction of the bridge, brought suit against defendant and served process upon the Secretary of State under the second section of the Act of 1904, which reads as follows:

"Be it further enacted, etc. That whenever any such corporation shall do any business of any nature whatever in this State without having complied with the requirements of Section 1 (one) of this act, it may be sued for any legal cause of action in any parish of the State where it may do business, and service of process in such suit may be made upon the Secretary of State the same and with the same validity as if such corporation had been personally served."

The Supreme Court of Louisiana held that the law contemplated and provided only for corporations actually

present and doing business in the State, and was not intended as a method of service after withdrawal from the State and cessation of business.

The reasoning and conclusion of the Court in the *Gouner* case apply equally to Section 1, and to the entire act. Section 2 provides a substitute agent when the name of an individual has not been given. It is co-extensive with Section 1, and the authority of the Secretary of State is co-extensive with the authority of the named individual agent, and the act so declares. If the authority of one ceases when the corporation becomes an absentee so does the other. There is no warrant in the language of the act, or in reason, for holding that the legislative intent and the general scope of the act underwent a complete change between the first and second sections; that when a foreign corporation named an individual the agency was not revocable, but when it agreed to the naming of the Secretary of State, a permanent officer, the agency was revocable, and was revoked by the corporation's withdrawal from the State.

The *Gouner* suit was brought January 8, 1908, and decided May 24, 1908 (132 La., pp. 964 and 965). The Act of 1908, amending the Act of 1904, was approved July 9, 1908. As the Legislature of 1908 retained the language of the Act of 1904 thus construed and applied, this construction must be considered to have had the sanction of the Legislature. *Shreveport Creosoting Company v. Shreveport*, 119 La., 641; *Sutherland on Interpretation and Construction*, par. 256, p. 337; *State v. Brewer*, 22 La. An., 273.

The Louisiana statutes providing for service on foreign corporations have been strictly construed by the Louisiana

Supreme Court, and we assume that its construction of Louisiana statutes is binding on this Court.

The contention in plaintiff's brief, pages 5-9, that the service on Irby was good under the law of Louisiana, even if Irby's authority had been revoked because Irby was the person who had "transacted the business" in the language of the Act of 1890, is disposed of by the fact that while the Act of 1890 was in force when the American Tobacco Company came into Louisiana, and the company complied with it by appointing Irby as its agent to receive service of process, the Act of 1904, as amended in 1908, and not the Act of 1890, was in force when this suit was instituted, and this is admitted in plaintiff's brief, p. 23.

The terms of Irby's appointment were in substantial compliance with the Act of 1904 as amended, and a new appointment appeared unnecessary. Evidently upon the theory that the defendant company continued "doing business" in Louisiana and that a new appointment was necessary because Irby's agency had been revoked by the act of the company, by its withdrawal from the State, or by force of the dissolution judgment of this Court, and therefore the defendant had not complied with the law, the plaintiff directed service of process on the Secretary of State (Rec., p. 23), and when service was made on the Assistant Secretary of State (Rec., p. 24) directed a new service on the Secretary of State (Rec., pp. 25 and 26).

Plaintiff appears to have abandoned these two services as no reference is made thereto in its brief, probably because in the case of *Simon v. Southern Railway Co.*, 195 *Fed. Rep.*, 56, the United States Circuit Court of Appeals

for the Fifth Circuit had decided that service on the Assistant Secretary of State was bad. That Court applied the strict rules of construction applied by the Supreme Court of Louisiana in the *Gouner* case heretofore cited in this brief.

No reference is made in plaintiff's brief to the service on the Secretary of State probably because of the decision of the United States District Court for the Eastern District of Louisiana in *Southern Ry. Co. v. Simon*, 184 Fed., 959, holding the statute unconstitutional, in that respect, as not affording due process of law, and because of the doubts cast upon its constitutionality by the Court of Appeals in aforesaid *Simon* case, and by the Supreme Court of Louisiana in the *Gouner* case.

Plaintiff's brief says that the question is "can this jurisdiction over the foreign corporation be defeated and frustrated as to business done under the license to enter the State by withdrawing the power of attorney," and cites in support of the negative the case of *Michael v. Mutual Ins. Co.*, 10 La. An., 737, and the cases of *Mutual Reserve Ass'n. v. Phelps*, 190 U. S., 148; *Mutual Ins. Co. v. Spratley*, 172 U. S., 617, and *Hunter v. Mutual Reserve Life Ins. Co.*, 218 U. S., 587.

Assuming (as the question assumes) that the Federal Court has "jurisdiction" over the foreign corporation; that is to say, that the foreign corporation is doing business in the State, then the withdrawal of the power of attorney cannot defeat jurisdiction, all that is necessary is to serve the foreign corporation through the agent then conducting and managing the business of the corporation in the State,

and service on Mr. Irby was bad because he had no relation whatsoever to the corporation at the time of services.

A reference, however, to the *Michael case* shows that the Court questioned the good faith of the revocation of the agents authority, that the revocation was confined to authority to take new risks, and was silent as to existing policies and continued conduct of business in so far as existing policies were concerned, and evidently the company continued to do business in Louisiana through its agents in so far as outstanding policies, adjustment of losses thereon, renewals, etc., were concerned. But whatever may be said of the *Michael case*, it has no application to our case because the matter therein dealt with has since been regulated by statute which is, of course, controlling.

This statute, as we have seen, has been construed in the *Gouner case* to allow of service of process only when the corporation is actually transacting business in the State at the time of service, and not when it has ceased to do business and withdrawn from the State.

Mutual Reserve v. Phelps, 190 U. S., 148, involved the validity of a judgment obtained in a Kentucky State Court by Phelps upon a policy issued before the company's license to do business in the State was revoked. This Court found that the Kentucky Court had jurisdiction because the Association continued to do business in Kentucky after its license had been revoked, and was doing business in that State at the time the suit was instituted, and, following the decision of the Kentucky Court, which this Court said "was very persuasive, if not controlling," deduced from the language of the Kentucky statute an agreement on the part

of the foreign insurance corporation entering the State under its terms, to consent to service of process upon the Insurance Commissioner in all controversies growing out of business transacted by it in the State under its license, and therefore held the Insurance Commissioner's authority to receive service to be irrevocable.

The *Spratley case*, 172 U. S., 602, also involves the validity of a judgment of a State Court based upon a State statute. This Court again found that the insurance company was doing business in the State at the time of service, and held that the agent of the insurance company upon whom process was served was within those named in the statute of the State. The Court said:

Page 610:

"In a suit where no property of a corporation is within the State, and the judgment sought is a personal one, it is a material inquiry to ascertain whether the foreign corporation is engaged in doing business within the State; *Goldney v. Morning News*, 156 U. S., 519; *Merchants' Manufacturing Co. v. Grand Trunk Railway Co.*, 13 Fed. Rep., 358; and if so, the **service of process must be upon some agent so far representing the corporation in the State that he may properly be held in law an agent to receive such process in behalf of the corporation.** An express authority to receive process is not always necessary.

"We think the evidence in this case shows that the company was doing business within the State at the time of this service of process."

Hunter v. Mutual Reserve Life Co., 218 U. S., 587 (a writ of error to the Supreme Court of New York) involved the validity of a judgment of a State Court of North

Carolina based upon four policies of insurance issued outside of the State of North Carolina to citizens of two other States. The statute of North Carolina under which the insurance company had entered the State provided for irrevocable authority to the insurance company to receive service of process as long as any liability of the company remained outstanding. This Court found that as to outstanding policies issued in North Carolina while it was carrying on active business there, the company must be regarded as continuing to do business in North Carolina after its withdrawal, but refused to hold that the company was doing business generally, and that the power to the Insurance Commissioner to receive service of process extended to all causes of action not within the purview of the statute, and authorized suits in North Carolina on policies issued to a citizen of other States in such other States. The Court affirmed the judgment of the lower Court, holding service on the Insurance Commissioner bad as to the four policies not issued in North Carolina and explained and distinguished the *Spratley*, *Birch* and *Phelps* cases, saying that any general language used in those decisions **"should be qualified to protect transactions which had been entered into, and to give them the benefit of the law in view of which they were made."**

There is a great deal of jurisprudence on the subject, and many decisions may be cited denying effect to a revocation of agency, *quoad* existing causes of action (almost always based on contracts as far as our observation goes) and many decisions may be cited giving full effect to such revocation. No confusion will result from this apparent conflict of authority, if it be remembered that the Courts were construing and giving effect to the different language and intent of different statutes.

A distinction must be made between cases on the subject originating in State Courts and cases in the Federal Courts. When the matter comes before a State Court it goes at once to the law and construes it for itself, unless the question has been previously settled by its prior decisions and it chooses to apply the doctrine of *stare decisis*. But the first question the Federal Court asks is whether the statute has been construed by the highest Court of the State. It then follows the construction of the State Court. No better case can be found for the application of the rule that a Federal Court should follow the decisions of the State Courts in the construction of State statutes than is afforded by the case of a State law embodying the policy of the State in respect to foreign corporations. No authority is required in support of this rule which has been strictly observed. But we call attention to what was said by the Supreme Court in *Mutual Reserve F. L. A. v. Phelps*, 190 U. S., 147, 158, a leading case of the class we are now discussing.

“Such decision of the highest Court of Kentucky, construing one of its own statutes, if not controlling upon this Court, is very persuasive, and it **certainly is controlling** unless it be held to be merely an interpretation of a contract created by the statute” (Black-letters ours).

There is no question in the present case or in the decision of the Supreme Court of Louisiana in the *Gouner case*, to which we have referred, as to a contract created by the statute and hence we may say in the words of the Supreme Court, the decision of the Supreme Court of the State “certainly is controlling.”

When the Federal Court finds no decision of the State Court to follow, it then proceeds to construe the law. Here also, as might be expected, we find a variety of conclusions, but not much direct conflict of reasoning.

The decisions of the State and Federal Courts are too numerous for each one to be cited and discussed. As, in our opinion, the Supreme Court of Louisiana has decided in the *Gouner case*, that the statutes of this State do not evidence a policy of the State to subject a foreign corporation to the jurisdiction of the Court after it has become an absentee, i. e., left the State with its belongings, and that power of the Secretary of State to receive service of process through doing business in the State without appointment of an agent is revoked by the corporation's withdrawal from the State, and, therefore, by like reasoning that a power of attorney granted to a selected agent is also revoked by withdrawal of the corporation from the State. We are not concerned with how other Courts, State or Federal, have construed other statutes.

The correctness of the conclusion reached by the Louisiana Supreme Court in the *Gouner case* is irresistibly strengthened when the legislation of Louisiana on the subject of service on foreign corporations is considered as a whole. For we find that as to such corporations and contracts as were considered by the Legislature of Louisiana to be the proper subject for suits after the withdrawal of the corporation from business in the State, the Legislature knew how to express its will in unmistakable language. Article 11 of Act No. 105 of the Acts of 1898 deals with the conditions under which foreign Insurance Companies shall be admitted to do business in this State. Section 1 (pp. 142-3) provides that every such corporation shall first

appoint in writing the Secretary of State as its agent and attorney upon whom process may be served, and then declares:

"Said power of attorney shall stipulate and agree on the part of the company, corporation, association or society that any lawful process against the same, which is served on said attorney shall be of the same legal force and validity as if served on the company, corporation, association or society, and that the authority shall continue in force so long as any policy, or other liability remains outstanding against the company, corporation, association or society in this State."

Recognizing the necessity of some provision to secure for the absent corporation notice of such service, it is further provided in the same section, that it shall be the duty of the Secretary of State when such service shall be made upon him to forward at once a copy thereof to the secretary or manager of the company, and that no judgment by default shall be entered against any such corporation if it be shown that the Secretary of State has not discharged this duty.

We respectfully submit that the judgment of the lower Court should be affirmed.

JUNIUS PARKER,
GEO. DENEGRÉ,
VICTOR LEOVY,
HENRY H. CHAFFE,

Attorneys.

December 8th, 1917.

APPENDIX.**LAWS OF THE STATE OF LOUISIANA GOVERNING
SERVICE OF PROCESS ON FOREIGN
CORPORATIONS.****I.**

Article 236 of the Constitution of 1879:

"Article 236. No foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the State upon whom process may be served."

II.

Article 264 of the Constitution of 1898:

"Article 264. No domestic or foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the State upon whom process may be served."

III.

Act 149 of 1890, page 188:

"(No. 149.)

An Act.

"To carry into effect Article 236 of the Constitution of 1879.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be the duty of all corporations, domiciled out of the State, doing business in the State, excepting mercantile corpora-

tions, to file in the office of the Secretary of State a declaration of the place or locality of its domicile, together with the name of its agent or officer in the State representing said corporation upon whom service of process can be made.

"Section 2. Be it further enacted, etc., Whenever any such corporation shall do any business of any nature whatsoever in this State, without having complied with the requirements of Section one of this act, it may be sued upon any cause of action in the parish, where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation, and each person or persons, company or firm shall be deemed the agent of said corporation upon whom service may be made."

IV.

Act 54 of 1904, page 133:

"An Act.

"To carry into effect Article 264 of the Constitution of 1898, in respect to foreign corporations doing business in this State.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be the duty of every foreign corporation doing any business in this State to file in the office of the Secretary of State a written declaration setting forth and containing the place or locality of its domicile, the place or places in the State where it is doing business, and the name of its agent or agents or other officer in this State upon whom process may be served.

"Section 2. Be it further enacted, etc., that whenever any such corporation shall do any business of any nature whatsoever in this State without having complied with the requirements of Section 1 (one)

of this act, it may be sued for any legal cause of action in any parish of the State where it may do business, and service of process in such suit may be made upon the Secretary of State the same and with the same validity as if such corporation had been personally served.

"Section 3. Be it further enacted, That all laws and parts of laws in conflict or inconsistent with this act be and the same are hereby repealed."

"Approved June 29, A. D., 1904,

"Newton C. Blanchard,

"Governor of the State of Louisiana."

V.

Act 284 of 1908, page 423, amending Section 1 of Act 54 of 1904.

"An Act

"To amend and re-enact section one (1) of Act No. 54 of the Acts of the General Assembly of Louisiana for the year 1904, approved June 29, 1904, entitled 'An act to carry into effect Article 264 of the Constitution of 1898 in respect to foreign corporations doing business in this State.'

"Section 1. Be it enacted by the General Assembly of the State of Louisiana that Section 1 of Act 54 of the Acts of the General Assembly of the State of Louisiana for the year 1904, approved June 29, 1904, entitled 'An Act to carry into effect Article 264 of the Constitution of 1898, in respect to foreign corporations doing business in this State,' be amended and re-enacted so as to read as follows:

"That it shall be the duty of every foreign corporation doing business in this State to file in the office of the Secretary of State a written declaration set-

ting forth and containing the place or locality of its domicile, the place or places in the State where it is doing business, the place of its principal business establishment, and the name of its agent or agents or other officer in this State upon whom process may be served, provided, that no foreign corporation shall select as its agent or agents for service any person not residing in a parish where said corporation has an established business, and, provided further, that service on said agent whether personal or domiciliary shall constitute a valid service on said foreign corporation.

"Approved July 9th, 1908,

"J. Y. Sanders,

"Governor of the State of Louisiana."

Act No. 105 of 1898, p. 142, approved July 13th, 1898:

"Article II.

"Insurance companies organized under the laws of other States or countries; conditions of admission.

"Section 1. Be it further enacted, etc., That no insurance company, corporation, association or society organized under the laws of any State in the United States, or any foreign country shall directly or indirectly issue policies, take risks or transact business in this State, until it shall have first appointed in writing the Secretary of State of this State to be the true and lawful attorney of such company, corporation, association or society, in and for this State upon whom all lawful process in any action or proceeding against the company, corporation, association or society may be served with the same effect as if the company, corporation, association or society existed in this State. Said power of attorney shall stipulate and agree on the part of the company, corporation, association or society that any lawful pro-

cess against the same, which is served on said attorney shall be of the same legal force and validity as if served on the company, corporation, association or society, and that the authority shall continue in force so long as any policy, or other liability remains outstanding against the company, corporation, association or society in this State. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the Secretary of State and copies certified by him shall be deemed sufficient evidence. Service upon such attorney shall be deemed sufficient service upon the principal.

"When ever lawful process against a company, corporation, association or society shall be served upon the Secretary of State he shall forthwith forward a copy of the process served on him by registered mail, post paid, and directed to the Secretary or Manager of the company.

"Provided the provisions of this section shall not be construed to interfere with the rights to sue insurance companies at the place of loss, as now provided by law.

"Provided, that no judgment by default shall be entered against any company, corporation, association or society if it can be shown to the satisfaction of the Court that the Secretary of State has neglected or failed to forward copy of process at the time said service was made upon him.

"Whenever service of process on insurance company may be made by law on the Secretary of State, he may, from time to time, designate some person in his office upon whom, in his absence, service of such process may be made; and such service shall be of the same force and effect as though made on the Secretary personally."

former branch business in Louisiana, as its agent upon whom process might be served under the law of that State, was effectual, notwithstanding the instrument of revocation, attested under its seal and filed with the Louisiana Secretary of State, was executed by a vice president of the corporation, without formal sanction by the board of directors; it appearing that the vice president acted with the knowledge and consent of the corporation in carrying out the decree of dissolution.

What constitutes such a doing of business as will subject a corporation to service of process depends upon the facts in each case. The general rule is that the business must be of a nature warranting the inference that the corporation has subjected itself to the local jurisdiction, and is, by its duly authorized officers or agents, present within the State or district where service is attempted.

The fact that a foreign corporation owns stock in local, subsidiary companies, does not bring it within a State for the purpose of service of process upon it; nor does the practice of advertising its wares in the State and sending into it its agents, who, without authority to make sales, to collect money or extend credit, merely solicit orders of the retail trade to be turned over to local jobbers, to whom the corporation sells its goods and who charge the retailers therefor.

The Louisiana Act of 1904 (Laws 1904, Act No. 54, p. 133), as amended in 1908 (Laws 1908, Act No. 284, p. 423), providing for service of process on the Secretary of State of Louisiana, is not applicable, as construed by the State Supreme Court, to foreign corporations which have withdrawn from the State and ceased to do business there at the time of service, as in this case.

Affirmed.

THE case is stated in the opinion.

Mr. Edwin T. Merrick, with whom *Mr. Ralph J. Schwarz* was on the brief, for plaintiff in error:

Jurisdiction of the United States courts usually depends upon whether the defendant is an inhabitant or resident of the district where the suit is brought. When, therefore, the Sherman Anti-Trust Act provides (§ 7) that a defendant violating that act may be served where "found," it is apparent, we submit, that whether the defendant resided in or inhabited the district, or even whether it had

an agent in the district, is not the test. The test would seem to be whether the defendant violating this law may, by fair and reasonable process, be located and reached in the State and district where the injury was committed, without regard to the presence of an agent in the State, designated as such. Louisiana Act No. 149 of 1890, provides that whenever an outside corporation shall do any business whatever in the State without designating an agent upon whom process may be served, it may be sued upon any cause of action in the parish where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation. With this act in force, defendant company entered the State, actually designated an agent therein and actually did business therein for many years. It thus came into the State accepting the terms of this statute. Mr. Irby and the Irby Branch of the American Tobacco Company were the ones, concededly, who transacted the business for, and acted for, the company in Louisiana, under the terms of the foregoing statute, and were so acting when the cause of action herein sued upon arose. Hence, we submit, that the defendant may be "found" within the State, by service upon the one thus transacting its business. *American Cotton Co. v. Beasley*, 116 Fed. Rep. 256. This is constitutional. *St. Clair v. Cox*, 106 U. S. 350, 356.

The business was not purely interstate in character; and whether such or not, the fact that it was actually being done in Louisiana makes the company subject to process and makes it "found" within the State, within the meaning of the Sherman Law. While the State might not be able to prevent such business or might not be able to burden it with licenses or taxation, because of the Constitution of the United States, none the less, such acts constitute doing business within the State and subject the defendant to service within the State as being "found"

therein. *International Textbook Co. v. Pigg*, 217 U. S. 91, 105; *International Harvester Co. v. Kentucky*, 234 U. S. 579, 585.

The so-called revocation of the power of attorney is merely a statement by a vice president and an assistant secretary that the American Tobacco Company has revoked authority of its resident agent and that the corporation has caused its seal and name to be subscribed. The corporation never considered the revocation. We think it will scarcely be denied that the action of the board of directors in making the appointment cannot be set aside by a vice president of the company without some evidence better than has been shown in the record that the vice president had the power to annul a formal resolution of the board of directors. Under the laws of Louisiana, as under general law, there was no authority in a vice president to revoke the power of attorney issued under the authority of the board of directors. Even a president's power is not thus conceded by the authorities. *Jackson Brewing Co. v. Canton*, 118 Louisiana, 826, 827.

The constitution and law of Louisiana required the appointment as a condition precedent to the right to do business, with the object of gaining jurisdiction over corporations so doing. This jurisdiction cannot be defeated and frustrated as to business done under the license to enter the State by withdrawing the power of attorney. *Michael v. Mutual Ins. Co.*, 10 La. Ann. 738; *Davis v. Kansas & Texas Coal Co.*, 129 Fed. Rep. 149; *Mutual Reserve Assn. v. Phelps*, 190 U. S. 148; *Mutual Ins. Co. v. Spratley*, 172 U. S. 617; *Hunter v. Mutual Reserve Life Ins. Co.*, 218 U. S. 587.

Mr. Junius Parker and Mr. George Denegre, with whom Mr. Victor Leovy and Mr. Henry H. Chaffe were on the brief, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

On January 4, 1912, the People's Tobacco Company, Limited, began suit against the American Tobacco Company in the District Court of the United States for the Eastern District of Louisiana to recover treble damages under § 7 of the Sherman Act of 1890. On January 5, 1912, service of process was made upon W. R. Irby as manager of the company. On January 16, 1912, the company filed exceptions to the service on the ground that it was a corporation organized under the laws of the State of New Jersey; that it was not found within the Eastern District of Louisiana or in the State of Louisiana, and was not engaged in business there, nor had it an agent therein; that W. R. Irby, upon whom service had been attempted, was not an officer, agent, or employee of the defendant, the American Tobacco Company, or authorized to accept service of process upon it at that time. On January 25, 1912, service was made upon the Assistant Secretary of State of Louisiana. Exceptions to that service upon practically the same grounds were filed by the defendant company. A further service was undertaken on February 2, 1914, on the Secretary of State of Louisiana and like exceptions were filed by the defendant company to that service.

Testimony was taken and upon hearing the District Court held that:

1. W. R. Irby was not the agent of the company at the time of the attempted service, and, therefore, the service upon him did not bring the company into court;

2. That the American Tobacco Company was not doing business in Louisiana at the time of the attempted service;

3. That the attempted service upon the Secretary of State of Louisiana did not bring the defendant corporation into court.

Section 7 of the Sherman Act provides that suits of the character of the one now under consideration may be brought in the district in which the defendant "resides or is found." When applied to a corporation this requirement is the equivalent of saying that it must be present in the district by its officers and agents carrying on the business of the corporation. In this way only can a corporation be said to be "found" within the district. In that manner it may manifest its submission to local jurisdiction and become amenable to local process.

The testimony shows that up to November 30, 1911, the American Tobacco Company had a factory in New Orleans for the manufacture of tobacco and cigarettes known as the W. R. Irby Branch of the American Tobacco Company, of which W. R. Irby was manager. Under the law of the State it had filed in the office of the Secretary of State an appointment of W. R. Irby as agent, upon whom service of process might be made.

On November 16, 1911, the Circuit Court of the United States for the Southern District of New York made a decree dissolving the American Tobacco Company. Among other things that decree provided that the American Tobacco Company should convey its W. R. Irby Branch to a company to be formed and known as the Liggett and Myers Tobacco Company. Conveyances were made to carry out this purpose.

The American Tobacco Company by an instrument executed by Mr. Hill, its vice president, revoked the authority of W. R. Irby as its resident agent, and filed the revocation of authority in the office of the Secretary of State of Louisiana on December 15, 1911. W. R. Irby testified that thereafter he was the manager of the Liggett and Myers Tobacco Company, and that he had no connection whatsoever with the American Tobacco Company, nor had he drawn any salary from that company since December 1, 1911.

It is true that the record discloses some instances in which collections were made upon bills in the name of the Irby Branch of the American Tobacco Company after the revocation of Mr. Irby's authority as its agent. Most of them were stamped across the face, Liggett and Myers Tobacco Company.

There remained on hand with the Irby Branch at the time of the dissolution a quantity of cigarette paper which was continued to be delivered to purchasers by the employees of the Irby Branch of the Liggett and Myers Tobacco Company upon orders received from the American Tobacco Company, and for its benefit and upon its account. This practically continued until the stock was exhausted, which the testimony shows was within a month after the dissolution, and before the attempted service of process in this case.

There were lodged in the custom house in New Orleans powers of attorney of the American Tobacco Company giving authority to those named therein to do what was necessary to make out export papers on behalf of the company. These powers of attorney do not appear to have been revoked, and existed after the service of process. The defendant company issued circulars subsequent to the time it was served with process in this suit, it also advertised in the New Orleans newspapers.

A consideration of all the testimony leads us to the conclusion that the American Tobacco Company undertook in good faith to carry out the decree of dissolution, and to take that company out of business in the State of Louisiana. It is true, as found by the District Court, that at the time of the service, and thereafter, the American Tobacco Company was selling goods in Louisiana to jobbers, and sending its drummers into that State to solicit orders of the retail trade, to be turned over to the jobbers, the charges being made by the jobbers to the retailers. It further appears that these agents were not